रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

सत्यमेव जयते

भारत का राजपत्र
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सं. 44] नई दिल्ली, नवम्बर 4—नवम्बर 10, 2018, शनिवार/कार्तिक 13—कार्तिक 19, 1940
No. 44] NEW DELHI, NOVEMBER 4—NOVEMBER 10, 2018, SATURDAY/KARTIKA 13— KARTIKA 19, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 अक्तूबर, 2018

का.आ. 1591.—केंद्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार, गृह विभाग, इम्फाल द्वारा जारी अधिसूचना संख्या 12/1(2)/2018-एच(सीबीआई)(एलडीए) दिनांक 05.04.2018 के माध्यम से प्राप्त समहति से लोकटक विकास प्राधिकरण, मणिपुर में वित्तीय अनियमितताओं से संबंधित सतर्कता मामले में भारतीय दंड संहिता, 1860 (1860 का अधिनियम संख्या 45) की धारा 420, 120-बी तथा भ्रष्टाचार उन्मूलन अधिनियम, 1988 (1988 का अधिनियम संख्या 49) की धारा 13(1)(डी) के साथ पठित धारा 13(2) के अधीन वी एण्ड एसीपीएस (सतर्कता एवं भ्रष्टाचार निरोधक पीएस) मणिपुर, इम्फाल में पंजीकृत एफआईआर संख्या 5(3)/2018 में जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मणिपुर राज्य में करती है।

[फा. सं. 228/20/2018-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 31st October, 2018

S.O. 1591.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Manipur, Home Department, Imphal issued vide Notification No. 12/1(2)/2018-H(CBI)(LDA) dated 5th April 2018, hereby extends the powers and jurisdiction of the Members of the Delhi Special Police Establishment in the whole of the State of Manipur for carrying out investigation into Vigilance Case under FIR No. 5(3)2018 of V & ACPS (Vigilance & Anti Corruption PS) Manipur, Imphal under sections 420, 120-B of Indian Penal Code, 1860 (Act No. 45 of 1860) and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) in connection with financial irregularities in Loktak Development Authority, Manipur.

[F. No. 228/20/2018-AVD-II]

S.P.R. TRIPATHI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महानिदेशक, स्कोप परिसर, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 150/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2018 को प्राप्त हुआ था।

[सं. एल–42011/142/2017–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 26th October, 2018

S.O. 1592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 150/2018) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director General, Scope Complex, New Delhi and their workman, which was received by the Central Government on 12.10.2018.

[No. L-42011/142/2017– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 150/2018

The General Secretary,
Delhi Office & Establishment Employees Union,
BTR Bhawan, 13-A, Rouse Avenue,
New Delhi 110 002 …Workman

Versus

1. The Director General,
   SCOPE complex,
   Core -8, First Floor,
   SCOPE-7, Lodhi Road,
   New Delhi – 110 003

2. The Director,
   M/s. Sentinels Security Pvt. Ltd.
   40/93, 40/92, Chittaranjan Park,
   New Delhi – 110 019 …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide letter No.L-42011/142/2017-IR(DU) dated 19/30.01.2018 for adjudication of an industrial dispute with the following terms:

'Whether non-consideration of the general demand of union in respect of wage and other allowance arbitrarily by the management of M/s Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workmen concerned are entitled to'

2. On receipt of the above reference, notice was sent to the workman union as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman union. Despite service of the notice, the workman union opted to abstain from the proceedings and no claim statement was filed on their behalf. Thus, it is clear that the workman union is not interested in adjudication of the reference on merits.

3. Since the workman union has neither put in appearance nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the workman union from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated : October 8, 2018

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, उत्तर दिल्ली नगर निगम, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 156/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2018 को प्राप्त हुआ था।

[सं. एल—42011/158/2016—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 156/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, North Delhi Municipal Corporation, New Delhi and their workman, which was received by the Central Government on 11.09.2018.

[No. L-42011/158/2016–IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No.156/2017

Smt. Sushila Devi W/o Shri Ram Niwas,
C/o MCD General Mazdoor Union,
Room No.95, Barrack No.1/10, Jam Nagar House,
Shahjahan Road, Delhi …Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre,
Minto Road,
New Delhi – 110 002 …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/158/2016-IR(DU) dated 29.05.2017 for adjudication of an industrial dispute with the following terms:

'Whether Smt. Sushila Devi widow of late Ram Niwas entitled to be appointed on compassionate grounds with effect from 03.07.2013 as regular safai karamchari? If not, then what other relief the workman is entitled to?'

2. Claim statement was filed on behalf of Ms.Sushila Devi, the claimant with the averments that he is presently working under North Delhi Municipal Corporation. Husband of the claimant, who was working as regular Safai Karamchari, expired in harness on 16.07.2012. However, the claimant herein was appointed on compassionate grounds as daily rated/muster roll Safai Karamchari instead of regular Safai Karamchari, which action of the management is unfair as well as illegal. As such, management exploited the claimant. The management follows the policy of Government of India/Government of NCT of Delhi. Finally, it has been prayed that that the claimant may be granted compassionate appointment as regular safai Karamchari with effect from the date of her appointment on compassionate grounds, i.e. 03.07.2013 with all consequential benefits.

3. Thereafter, the case was listed for filing of written statement by the management. However, the claimant, Smt. Sushila Devi stated at the bar that she does not want to pursue the reference nor does she want to adduce any evidence in support of her case. Statement of the claimant has been separately recorded. Since the claimant is no more interested in pursuing her case on merits, this Tribunal is left with no alternative but to pass a 'no claim' award. However, it will not debar the workman, Ms.Sushila Devi, from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

A.C. DOGRA, Presiding Officer

Dated : September 10, 2018

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, दक्षिण दिल्ली नगर निगम, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 165/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2018 को प्राप्त हुआ था।

[सं. एल–42011/76/2015–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 165/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, South Delhi Municipal Corporation, New Delhi and others and their workman, which was received by the Central Government on 24.09.2018.

[No. L-42011/76/2015–IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.

ID No. 165/2015

The Workmen
Represented by MCD General Mazdoor Union (Regd.),
C/o. Room No.95, Barrack No.1/10,
Jam Nagar House, Shahjahan Road,
New Delhi 110011 …Workmen/Claimants

Versus

(1) The Commissioner (South),
South Delhi Municipal Corporation,
9th Floor Civic Centre, Shyam Prasad Mukherjee Marg,
Minto Road, New Delhi 110002.

(2) The Commissioner (North),
North Delhi Municipal Corporation,
4th Floor Civic Centre, Shyam Prasad Mukherjee Marg,
Minto Road, New Delhi 110002.

(3) The Commissioner (East),
East Delhi Municipal Corporation,
Udyog Sadan, Near Patpargan j,
Shahdara, Delhi 110032. …Management

AWARD

In the present case, matter was referred to this Tribunal vide letter No. L-42011/76/2015-IR(DU) dated 20.07.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the sweepers/Safai Karamcharis are entitled to be enhanced under the 1st ACP Scheme w.e.f. 09.8.1999 after completion of 12 years or service in the pay scale of Rs.2750-4400 in place of Rs.2610-4000 and 2nd ACP after completion of 24 years of services are entitled for the pay scale of Rs.3050-4590/- in place of Rs.2750=-4400 in sanitary wing of the management alongwith all consequential benefits? If so, what directions are necessary in this respect ?'

2. Both parties were put to notice and the workmen/claimants filed statement of claim through President of MCD General Mazdoor Union. As per the averments made in the claim petition, the Sweepers/safai Karamcharis working under the sanitary wing of the Management who have completed 12 years of service are entitled to Ist ACP in the pay-scale of Rs.2750-4400/- in place of Rs.2610-4400/- and are entitled to 2nd ACP in the pay scale of Rs.3050-4590/- in place of Rs.2750-4400/-, on completion of 24 years of service, in terms of Office Memorandum dated 9./8/1999 issued by Ministry of Personnel, Public Grievance and Pensions, Govt. of India, New Delhi under the Assured Career Progression Scheme. The benefit of Assured Progression Scheme is to be granted as per hierarchy of promotional posts. But the Management has not yet complied with the said O.M. of the Govt. of India, though duly adopted by it and have not granted the benefits of the Assured Progression Scheme to the workmen/sweepers despite service of demand notice dated 4/10/2014. Prayer has been made for passing of the Award, thereby enhancement of 1st Scheme w.e.f. 9.8.1999 after completion of 12 years of service in the pay scale of Rs.2750-4400 in place of Rs.2610-4000 and 2nd ACP after completion of 24 years of service be granted in the pay-scale of Rs.3050-4590/- in place of Rs.2750-4400/- to the Sweepers/Safai Karamcharis posted in the sanitary wing of the Management, alongwith all consequential benefits.

(2) The claim petition has been resisted by the Management No.1 by filing written statement and took preliminary objections that this Tribunal has no jurisdiction to adjudicate upon the present matter of controversy because appropriate government qua management of MCD is the Govt. of NCT of Delhi in view of Section 485 of Chapter XXIV of DMC Act and that the claim petition is barred for want of prior mandatory notice as required under Section 478 of DMC Act. It is stated that this is purely an administrative matter and in fact existing pay scale of Safai Karamchari is Rs.2550/- and next ACP falls under the pay scale of Rs.2610-3540/- and that the Management is ready to give the First ACP in the pay scale of Rs.2610-3549/- to those employees who fulfills the criteria of next promotion as per the Recruitment Rules, and so far as the second ACP is concerned, the same can be given to the workmen only if they fulfill the criteria of the next promotion as per the recruitment rules. It is denied that the workmen are entitled for first ACP after 12 years in the pay scale of R"s.2750-4400 and second ACP after completion of 24 years in the pay scale of Rs.3050-4500/-. Prayer has been made for dismissal of the claim petition.

(3) Management No.2/North Delhi Municipal Corporation also filed its written statement and took preliminary objection to the effect that instant dispute is not an industrial dispute as defined under Section 2(k) of ID Act and that the MCD General Mazdoor Union has no locus standi to raise the present dispute since the said Union is not a recognized Union of the Management NO.2. While denying the allegations made in the claim petition regarding entitlement of the workmen/sweepers for grant of financial upgradation in the pay-scale of Rs.2750-4400 in the First ACP after completion of 12 years of service or grant of financial upgrdation in the pay scale of Rs.3050=-4590/- in place of 2750-4400/-, it has been stated that post of Sanitary Guide is the promotion post of the post of Safai Karamchari. While mentioning the pay-scales of Safai Karamchari at different periods, it has been stated that as per provisions of ACP Scheme, Safari Karamcharis are entitled to the pay-scale of Rs.2610-3540/- after completion of 12 years regular service or on 9/8/99 whichever is later and after completion of 24 years of their regular service, they are entitled to the pay scale of Rs.2750-4400/- provided that the candidate/official is fulfilling the eligibility criteria as per notified RRs. The chart of the pay-scale of Safai Karamchari at different period is given hereunder :—

Sl. No.	Stage	Pay-scale of Safai Karamcharis (in Rs.)	Pay scale of Sanitary Guide (in Rs.)
1	3rd CPC	196-3-200-4-232	200-3-206-4-232-EB-4-240
2	4th CPC	750-12-870-EB-14-940	885-12-955-14-1025
3	5th CPC	2550-55-2660-65-3200	2610-60-3150-65-3540
4	6th CPC	5200-20200/-(+GP1800)	5200-20200 (+GP Rs.1800)

It is stated that claim made by the workmen is wrong and hence claim petition is devoid of any merits.

(4) The claimants/workmen filed rejoinder, denying all the allegations made by the Management and reiterated their own case as set up in the claim petition.

(5) On the pleadings of the parties, this Tribunal vide order dated 7/01/2016 framed following issues :-

(i) Whether claim filed by the claimant is not legally maintainable in view of the various preliminary objections?

(ii) In terms of reference.

(iii) Relief.

(6) The Workmen in support of their case examined Shri B.K Prasad, President of MCD General Mazdoor Union as W.W.1 who tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/7.

(7) On the other hand, the Management in order to rebut the case of the claimant examined Shri Neeraj Kumar, Assistant Commissioner/DEMS (HQ), SDMC as MW1 who tendered his evidence by way of affidavit Ex.MW1/A.

(8) I have carefully gone through the evidence adduced on record by both the parties and have given my thoughtful consideration to the rival contentions made on behalf of the parties.

Issue No. 1 and 2 :

(9) Both these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of.

(10) So far the jurisdiction of this Tribunal to adjudicate the present reference is concerned, learned A/R for the management during the course of arguments did not press this issue since the dispute has been referred to it by the Appropriate Government under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the ID Act and the workmen/sweepers working in the sanitary wing of the Management are the workmen as provided under Section 2(S) of the Act.

(11) It is not in dispute that Office Memorandum bearing No.35034/I?07-Estt.(D) dated 9./8/1999 issued by the Ministry of Personnel, Public Grievance and Pensions, Govt. of India which provides for grant of Assured Career Progression to the Central Govt. employees (civilian) so as to meet out the problem of genuine stagnation and hardship being faced by the employees due to lack of adequate promotional avenues, is being adopted by the Management herein as a matter of policy. Certain conditions for grant of benefits under the ACP Scheme dated 9./8/1999 have been stipulated in Annexure-I of the said O.M. which inter-alia provides that Fist financial upgradations under the ACP scheme in the entire Govt. service career of a employee shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of first financial upgradation, subject to fulfillment of prescribed conditions. Condition No.6 of the same recites that fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group "D" employees etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purpose and restriction of ACP scheme for financial and certain other benefits (House Building Advance, allotment of govt. accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be excused for grant of benefits under the ACP Scheme. Standard/common pay scales relating to the posts of S-1 to S-24 have been mentioned in Annexure-II of the said O.M.

(12) It would not be out of place to mention here that under the ACP Scheme dated 9/8/1999, two financial upgradation benefits after completion of 12 years of service and 24 years of service respectively were granted, whereas Modified Assured Career Progression Scheme (MACP) was introduced w.e.f. 1/9/2008 with the provision of grant of three promotional/financial upgradation benefits after completion of regular service of 10, 20 and 30 years of service respectively.

(13) It is not in dispute that post of Sanitary Guide in the Sanitary Wing of the Management/MCD is the promotional post to the post of Sweeper/Safai Karamcharis. In cross examination, MW1 Neeraj Kumar admitted that sweepers/safai karamcharis are entitled to be promoted to the post of Sanitary Guide as per Ex.WW1/3 but volunteered that they should fulfill the eligibility criteria. MW 1 also admitted that regular safai karamchari is entitled to be promoted as sanitary

guide as per Ex.WW1/3. On the basis of testimony of MW1, Ld.A/R for the Workmen strenuously argued that the workmen are entitled to get pay scale of Rs.2750-4400/- in place of Rs.2610-4000 on completion of 12 years of service i.e. at the time of grant of Ist ACP and they are entitled to get pay scale of Rs.3050-4590/- in place of Rs.2750-4400/- after completion of 24 years of service, as per ACP Scheme dated 9/8/1999 itself. Neither in the statement of claim nor in the affidavit Ex.WW1/A, the representative of the workmen has mentioned as to what was/is the pay-scale of the Sweeper/Safair Karamchari and what is the pay-scale of Sanitary Guide posted in the Sanitary wing of the Management. Document Ex.WW1/2 (relied upon by the workmen) is a copy of the Recruitment Regulation for the post of Safai Karamchari (class IV), in the pay-scale of Rs.196-232 (as per 3rd Central Pay Commission Report) which provides that the candidates applying for the said post under direct recruitment, should have passed primary school examination from a recognized school/board. To the same effect is the document Ex.WW1/M-1 viz. schedule/recruitment rules dated 28-11-1984 issued by Delhi Admn (now Govt. of NCT of Delhi) for the post of Safai Karamchari wherein also the pay-scale of Safai Karamchari has been mentioned as Rs.196-3-220-EB-232. Further, the document Ex.WW1/3 which too has been relied upon by the Workmen, is the copy of Recruitment Regulation for the post of Sanitary Guide (category-C post) in the pay scale of Rsw.200-3-206-4-234-EB-4-250 is a promotional post of Safai Karamcharis with 3 years regular service in the grade and have passed Middle class from a recognized School/Board.

14) Thus, it is evident from the documents Ex.WW1/2 and Ex.WW1/3, prior to 4th Central Pay Commission report i.e. prior to 1/1/1986, the pay scale of Safai karamchari (which is an initial post & to be filled in by direct recruitment) in the Sanitary Wing of Management was Rs,196-3-200-4-232, whereas post of Sanitary Guide (next promotional post) in the sanitary wing of Management/MCD was in the pay-scale of Rs. 200-3-206-4-232-EB-4-240. As mentioned in para 2 above, pay scale of Safai Karamcharis were revised to Rs. 750-12-870-EB-14-940, while pay scale of Sanitary Guide were revised to Rs. 885-12-955-14-1025 as per the recommendations of 4th CPC w.e.f. 1/1/1986. Subsequently, pay scale of Rs. Safai Karamcharis were revised to Rs. 2550-55-2660-65-3200 while pay scale of Sanitary Guide were revised to Rs. 2610-60-3150-65-3540 as per the recommendations of 5th CPC w.e.f. 1/1/1996. The Assured Career Progression Scheme was introduced by the Govt. w,.e.f. 9/8/1999 which provided that on completion of 12 years of regular service, civil officials were/are entitled to be granted financial upgradation in the next higher post in the hierarchy. The workmen/claimants have not adduced any evidence to show that pay-scale of Sanitary Guide/s working in the Sanitary Wing of the Management was revised to Rs.2750-4400/- after 1/1/1996 and in such scenario, the safai Karamcharis were/are entitled to the said pay scale by virtue of 1st financial upgradation under the ACP Scheme of the Government, on completion of 12 years of regular service. Similarly, the workmen have not adduced any evidence to show that pay scale of Assistant Sanitary Inspector (next higher post to the post of Sanitary Guide) in the Sanitary Wing of the Management at the relevant time were revised to Rs.3050-4590/- in place of Rs.2750-4400/-, as claimed by them.

15) In view of the above, it is clear crystal that 1st financial upgradation under ACP Scheme dated 9/8/1999, for the Safai Karamcharis working in the Sanitary Wing of Management in the pay-scale of Rs. 2550-55-2660-65-3200 at the time of introduction of ACP Scheme, as per their hierarchy, was/is similar to the post of Sanitary Guide, in the pay scale of Rs. 2610-60-3150-65-3540 and not in the pay-scale of Rs.2750-4400/- as allegedly claimed by the workmen and that 2nd financial upgradiation for the Safair Karamcharis of the Management was in respect of the post in the pay scale of Rs..2750-4400/- subject to fulfilling the conditions as required under the Scheme.

16) Before parting with, I may mention that the Management in its written statement as well as evidence adduced before this Tribunal has stated that the Management is ready to give benefit of First ACP to the Safai Karamcharis (working in the pay scale of Rs.2550- 3200/-) after completion of 12 years of regular service or on 9/8/1999, whichever is later, in the pay-scale of Rs.2610-3540/- viz. pay scale of Sanitary Guide. Thus, it seems that the Management has not suo-motto granted benefit of Assured Career Progression Scheme dated 9/8/1999 and of Modified Assured Career Progression Scheme effective from 1/9/2008, to the workmen working in its Sanitary Wing for the reasons best known to them.

17) In the aforesaid facts and circumstances of the case, I find no merit in the claim of the workmen and it is held that the workmen viz. Sweepers/Safai Karamcharis are entitled to get first financial upgradation on completion of 12 years of regular service, in the pay-scale of Rs.2610-4000 viz. pay scale of Sanitary Guide and to get second financial upgradation on completion of 24 years of regular service, in the pay-scale of Rs.2750-4400/-, as per their hierarchy, subject to fulfillment of conditions as specified in RRs and under the ACP SCHEME DATED 9/8/1999. The Management is directed to grant financial benefits to all the eligible workmen Safai Karamcharis under the ACP Scheme dated 9/8/1999 as well as under the Modified ACP Scheme effective from 1/9/2008 and arrears of the same be paid to all such eligible workmen, within three months from the date of publication of this Award. Award is passed accordingly.

AVTAR CHAND DOGRA, Presiding Officer

Date. 19.9.2018

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कार्यकारी निदेशक, पावर ग्रिड निगम इंडिया लिमिटेड (एनआर—1), नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 190/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2018 को प्राप्त हुआ था।

[सं. एल—42011/21/2018—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 190/2018) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Executive Director, Power Grid Corporation India Limited (NR-I) New Delhi and their workman, which was received by the Central Government on 24.09.2018.

[No. L-42011/21/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 190/2018

Shri V.K. Gaur,
House No.15, Gali No.8,
Kanti Nagar Extension,
Delhi – 110 051 …Workman

Versus

The Executive Director,
Power Grid Corporation India Limited (NR-I),
B-9, Qutub Industrial Area,
Katwaria Sarai,
New Delhi – 110 065 …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/21/2018-IR(DU) dated 01.05.2018 for adjudication of an industrial dispute with the following terms:

> 'Whether the action of Management of Power Grid Corporation of India Limited in transferring the workman Shri Vinod Kumar Gaur, working as Assistant Grade-I from Maharani Ganj, New Delhi to Kota in Rajasthan vide office order dated 15.05.2017 is fair, just & legal? If not, to what other relief the workman is entitled to & what directions are necessary in this respect?'

2. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain from the proceedings and no claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the workman, Shri Vinod Kumar Gaur from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated : September 19, 2018

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य कल्याण अधिकारी, गैर–वैधानिक कैंटीन (डीसी), कार्मिक और प्रशिक्षण विभाग, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 219/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2018 को प्राप्त हुआ था।

[सं. एल–42011/116/2015–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 219/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Welfare Officer, Non-Statutory Canteen (DC), Department of Personnel and Training, New Delhi and their workman, which was received by the Central Government on 12.10.2018.

[No. L-42011/116/2015–IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.

ID No. 219/2015

Smt. Jhupli Devi
W/o. Late Shri 9 Gyan Singh,
Through All India Central Govt. Canteen Employees
Association and Canteen Mazdoor Sabha,
F-48, Lado Sarai,
New Delhi 110030. … Workman/Claimant

Versus

1. Chief Welfare Officer,
   Non-Statutory Canteen (DC),
   Department of Personnel & Training,
   Ministry of P&PG, North Block,
   New Delhi 110001.

2. The Joint Secretary (Training(& CAO,
   Ministry of Defence, E-Block Hutments,
   New Delhi 110011. …Management/ Respondents

AWARD

This Award shall decide a matter which was referred to this Tribunal by the appropriate Government *vide* letter No. L-42011/116/2015/IR(DU) dated 29.09.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:—

> 'Whether action of the management in not granting family pension as per the CCS (CCA) Pension Rules, 1972 to Smt. Jhupli Devi w/o. Late Gyan Singh is illegal and/or unjustifed and if so, to what relief is she entitled to and what directions are necessary in this regard ?

2. Both parties were put to notice and the claimant Smt. Jhupli Devi filed statement of claim. Relevant facts of the case as emerged out from the claim petition are that Shri Gian Singh s/o. late Shri Khushal Singh Rawat who was the husband of the claimant Smt.Jhupli Devi, was employed in the year 1970 and was working as Bearer/cook in the non-statutory canteen of Air Headquarter, Vayu Bhawan, New Delhi under the control of the Management. He expired on 3-10-1985. According to the case of the claimant, Central Administrative Tribunal vide its order dated 3/12/1999 in OA No. 572/1996 (Federation of All India Central Govt. Canteen Employees Workers Association vs. UOI) held

> "That employees of the canteens of Central Govt Departments need to be given same benefit as has been given to the employees of Railway Canteens and directed UOI to grant the benefits of entire past service prior to the applicants having been declared as Govt. Servants for counting towards pensionery benefits.. (Ex,.WW`1/1)

The said order was confirmed by Hon'ble High Court in W.P.(C) No.5695/2000 vide order dated 30/4/2012 and thereafter, Govt. of India issued O.MJ. dated 26/11/2012 (Ex.WW1/2). A demand notice is stated to have been submitted by the claimant before the Management, seeking pensionery benefits w.e.f.26/11/2012 but to no avail. Then, she approached the Conciliation Officer and no settlement could be arrived at . It has been stated that claimant is ready to return the pensionery benefits received from Employees Provident Fund Authority as per order by the Department of Personnel to convert the EPF amount in GPF in the name of her husband late Gian Singh. Prayer has been made that she be granted pensionery benefits w.e.f. 3/12/1999 and payments made under the EPF Act may kindly be adjusted/recovered from her.

3. Management resisted the claim of the claimant by filing written statement wherein various preliminary objections have been taken inter-alia that claim is not maintainable inasmuch Management is not "an Industry" under the Act and that there is no industrial dispute, inasmuch as the employees working in the departmental non-statutory canteens in the Central Govt. offices are deemed/declared to be govt. servants and are governed by respective Recruitment/Service Rules and not by the Industrial Disputes Act. It has been denied that the claimant is entitled for pensionery benefits. It has been alleged that the application dated 10/8/2013 received from the claimant for grant of family pension was duly replied vide letter dated 25/'9/2013, conveying that her case was not covered under eligible category. Prayer has been made for dismissal of the claim petition.

4. Claimant filed rejoinder, reiterating her own case and denied the allegations as made in the written statement.

5. On the pleadings of the parties, following issues were framed on 1/6/2016 :—

i) Whether petition is not maintainable in view of the preliminary objections ?

ii) Whether the claimant is entitled for pensionery benefits, w.e.f. 3/12/1999 as alleged ?

iii) As in terms of reference "Whether action of the management in not granting family pension as per the CCS (CCA) Pension Rules, 1972 to Smt. Jhupli Devi w/o. Late Gyan Singh is illegal and/or unjustifed and if so, to what relief is she entitled to and what directions are necessary in this regard ?

6. The Claimant in support of her case examined himself as W.W.1 and tendered her affidavit Ex.WW1/A and relied on the documents filed EX.WW1/1

to Ex.WW1/12.

7. On the other hand, the Management in order to rebut the case of the claimant examined one Shri Mohd. Nadeem, Under Secretary (Canteens) in the DOPT, as MW1. He filed his affidavit Ex.MW1/A and relied on documents Ex.MW1/1 to Ex.MW1/15.

Issue No. 1 to 3 " =

8. All these issues are being taken up together for the purpose of discussion as they can be conveniently disposed of.

9. During the course of arguments, learned A/R for the Management did not press the issue regarding maintainability of the petition before this Tribunal, since the reference which has been received from the Appropriate Government, is required to be answered after adjudicating the controversy between the parties relating to the terms of reference.

10. From the pleadings and evidence adduced on record, it is evident that Shri Gian Singh – husband of the claimant Jhupli Devi was working as Cook in Departmental Canteen at Vayu Bhawan, New Delhi and expired on 2/10/1985. A/R for the claimant strenuously argued that the claimant is entitled for family pension as per order of the Central Administrative Tribunal in OA No.572/1999, copy of which has been filed on record as Ex.WW1/1. He also submitted that the Govt. Of India has already issued O.M. dated 26/11/2012 (Ex.WW1/2) regarding grant of pensionery benefits to the employees of Non statutory Departmental canteen. As such, the claimant may be held entitled for family pension.

11. Per contra, A./R for the Management contended that the claimant is not at all entitled for grant of family pension as her case is not covered by the criteria laid down by the Hon'ble Supreme Court vide judgement dated 11.10.91 in the case of CK Jha and others *Vs.* UOI (Ex.MW1/8) and O.M. dated 24-1-92 (Ex.MW1/9) which was issued pursuant to the aforesaid judgement of the Apex Court(Ex.MW1/8). Lastest O.M. issued in regard to pensionery benefits is dated 26/11/2012 (Ex.MW1/12)

12. Perusal of the judgement of the Hon'ble Central Administrative Tribunal (Ex.WW1/1) shows that in that the petitioners *viz.* The Federation of All India Central Govt Canteen Employes workers' Association and one Smt. Diwan Singh of Income Tax Canteen had sought benefits of past service rendered by them in the departmental canteens of the Govt., prior to their being declared as Govt employees on the same lines as has been granted to the employees of Railway Canteens vide order dated 5/1/1993 and 9-11-1993. Observing that the petitioners were similarly placed as the employees of Railway Canteens, Hon'ble CAT vide its order dated 3/12/1999 had directed the respondents *viz.* Union of India and others to grant the benefits of entire past service prior to the applicants/petitioners having been granted as Govt servants for counting towards pensionery benefits. It is crystal clear that the decision of the Hon'ble CAT related to **grant of the benefits of entire past service** prior to the applicants/petitioners having been granted as Govt servants for counting towards pensionery benefits and **it was not ipso facto grant of pension to all such employees.**

13. It is not in dispute that against aforesaid decision of CAT, Union of India had moved Hon'ble High Court in WP No.5695/2000 which was dismissed vide order dated 30/4/2012 and thereafter, the Govt of India issued office memorandum dated 26/11/2012 (Ex.WW1/2) which has also been relied upon by the claimant herein and its copy is Ex.MW1/12 as relied upon by the Management. Heading of the said O.M. is regarding Implementation of the order dated 30.4.2012 passed by Hon'ble Delhi High Court in W.P. (Civil) No.5695/2000 – pensionery benefits to the employees of Non-statutory Departmental Canteens. Through that O.M., while modifying the earlier provisions as contained in its earlier O.M. bearing No.12/3/92-Dir.(C) dated 16/12/1993 and 8/11/2000 regarding recknoning of qualifying service, it was clarified that entire past service rendered on regular basis by the non statutory canteen employees will be reckoned as "Qualifying Service" for the purpose of pension in accordance with relevant provisions contained in CCS (Pension) Rules, 1972 and related orders and that admissibility will be subject to the refund of entire

amount received as employers' contributions to the EPF, if any including interest thereon. Accordingly, all the Ministries/Departments were asked to issue instructions to their attached./subordinate offices **to take immediate necessary action to settle the cases of the employees afresh who retired/died in harness on or after 1/10/1991.**

14. This Tribunal has got all the sympathy with the claimant herein whose husband Shri Gian Singh who was working as Cook under the control of Management herein, expired on 2/10/1985 but her case is not covered under eligible category for entitlement of family pension in view of the provisions contained in O.M. dated 26-11-2012 (Ex.WW1/2) which clearly provided for grant of pension/family pension where t**he employees concerned retired/died in harness on or after 1/10/1991**, though their qualifying service is to be counted/ calculated for entire regular past service. The claimant has not led any other evidence to show that similarly placed employee as that of her husband who died prior to 1/10/1991 has been granted pension/family pension under any order of the Hon'ble High Court/Supreme Court or office memorandum of the Govt. In these circumstances, action of the management in not granting family pension as per the CCS (CCA) Pension Rules, 1972 to Smt. Jhupli Devi w/o. Late Gyan Singh can not be held to be illegal or unjustified.

Relief :—

15. Having regard to the overall facts and circumstances of the case, this Tribunal has no option but to hold that the claimant is not entitled to any relief whatsoever. The claim petition is hereby dismissed, however, with no orders as to costs. The award is passed accordingly.

AVTAR CHAND DOGRA, Presiding Officer

Date : 03.10.2018

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, उत्तर दिल्ली नगर निगम, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 226/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.10.2018 को प्राप्त हुआ था।

[सं. एल—42011/127/2015—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 226/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, North Delhi Municipal Corporation, New Delhi and their workman, which was received by the Central Government on 22.10.2018.

[No. L-42011/127/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 226/2015

Shri Jasbir Singh & Others, represented by
The President,
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jamnagar House, Shah Jahan Road,
New Delhi – 110 011 …Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi – 110 002 …Management

AWARD

This award shall dispose of a reference received from Ministry of Labour and Employment *vide* Order No. L-42011/127/2015-IR(DU) dated 27.10.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the action of the management of North Delhi Municipal Corporation by not granting promotion and pay scale of 3050-4590 revised from time to time alongwith all consequential benefits to Shri Jasbir Singh S/o Shri Bhawar Singh with effect from 01.01.1994, Shri Dharam Pal S/o Shri Karan Singh with effect from 01.01.1994, Shri Balak Ram S/o late Shri Puran Singh with effect from 01.01.2006, Shri Mahender Singh S/o Shri Badam with effect from 01.01.2000, Shri Anand S/o Shri Mithan Singh with effect from 01.01.1999 and Shri Majoj Kumar S/o Shri Khem Chand with effect from 01.04.1994 is fair and legal ? If not, what relief the workmen is entitled to and from which date?'

2. Claim statement was filed by the claimant herein averring that the following malis who were performing the duty of acting Chaudhary are denied promotion on grounds that they are not 10th Agriculture:

S. No.	Name (S/Shri)	Father's Name	Date of regularization as Mali	Date since when working as Acting Chaudhary	Zone
1.	Jasbir Singh	Kanwar Singh	01.04.1988	01.01.1994	Civil Lines
2.	Dharm Pal	Karan Singh	01.04.1988	01.01.1994	Civil Lines
3.	Anand	Mithan Singh	01.04.1989	01.01.1999	Civil Lines
4.	Mahender Singh	Badam	01.04.1987	01.01.2000	Civil Lines
5.	Manoj Kumar	Khem Chand	01.04.1994	18.01.2000	Civil Lines

3. The above workmen have been performing their duties as Garden Chaudhary but were not been allowed to participate in the promotion to the post of Garden Chaudhary on the grounds that the claimant is not 10th pass with Agriculture as one of the subjects. Some acting chaudharies similarly situated were allowed grant of pay of Chaudhary from the date when they were performing their duty as Garden Chaudhary as per the direction of Hon'ble Tribunal in TA No.1317/2009 in the matter of Sultan Singh *Vs.* MCD and further direction of Hon'ble High Court of Delhi titled Sultan Singh & others in WP(C) No.7947/2010 and dismissed as withdrawn by Hon'ble Supreme Court of Special Leave to Appeal (C) No.20069/2011 on 09.04.2012. In another writ petition No.5453/2012 titled Sultan Singh *Vs.* MCD Division Bench of Hon'ble High Court directed the management to comply with the writ petition. Management vide order 04.06.2013 directed for payment of duties of higher post (Garden Chaudhary). The claimant was not allowed to participate in the promotion process due to wrong interpretation of the unnotified recruitment rules, that the claimants are not 10th pass with Agriculture. Juniors to the claimant were promoted to the post of Garden Chaudhary with effect from 04.03.2014. Hence the management has not only violated the un-notified recruitment rules but also violated Article 14 & 16 of the Constitution of India. Hence the management has indulged in unfair labour practice and non-grant of promotion to the claimant is totally illegal, unfair, unjust and discriminatory. Even Hon'ble High Court in a bunch of writ petitions No.7669/2002 has held on 26.02.2004 that 50% promotional posts in which the educational qualification are not required. Juniors to the claimants were promoted as Chaudhary with effect from 04.03.2014 under promotion quota. Finally, it has been prayed that the claimants may be granted promotion as Garden Chaudhary with effect from 04.03.2014 and also award pay scale of Rs.3050-4590 with all consequential benefits with effect from 01.01.1999 to Shri Anand and from 18.01.2000 to Shri Manoj Kumar.

4. Claim was demurred by the management taking various preliminary objections, inter alia Management has demurred claim of the claimants by taking preliminary objections, inter alia, present dispute not being an industrial dispute as there is no espousal & no demand notice has been served upon the management, union having no locus standi to raise the dispute, claim being misconceived, claim being stale etc. On merits, management has admitted the factum of regularization of the claimant as mali as mentioned in para 2 above. As per the existing rules for the post of Garden Chaudhary, malis having eight years of regular service in the grade and possessing qualification of 10th pass with Agriculture are eligible for promotion to the next post. There is prescribed procedure for promotion to the post of Garden Chaudhary and there must be sanctioned/vacant post of Garden Chaudhary to which the workman can lay claim when he has passed trade test conducted by the department. The management has denied the remaining material facts contained in the statement of claim.

5. Rejoinder was filed by the claimants wherein the averments made in the statement of claim were reiterated and the averments contained in the statement of defence were denied.

6. From the pleadings of the parties, following issues were framed vide order dated 21.10.2016:

(i) Whether the reference is not legally maintainable in view of the preliminary objections?

(ii) In terms of reference

(iii) Relief

7. Claimants in order to prove their case against the management examined Shri Jasbir Singh, Shri Balak Ram, Shri Mahender Singh, Shri Manoj Kumar, and Shri B.K.Prasad as WW1, WW2, WW3, WW4 and WW5, whose affidavits are Ex.WW1/A to Ex.WW5/A. Shri Manoj Kumar tendered in evidence documents Ex.WW4/1 and Ex.WW4/2 and Shri Prasad tendered in evidence documents Ex.WW5/1 to Ex.WW5/3. Management, in order to rebut the case of the claimant examined Shri Brijbir Singh, Assistant Director(Horticulture) as MW1, who tendered in evidence his affidavit Ex.MW1/A and also relied on documents Ex.MW1/1 to Ex.MW1/3.

8. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Nitin Soam, A/R for the management.

Findings on issue No. (i)

9. Admittedly, in the present case, reference has been made under Section 10 sub Section (2A) of the Act for adjudication. It is now well settled position in law that when a reference has been made for adjudication to the Tribunal or Labour Court, as the case may be, it is paramount duty of the court to decide the same on merits, irrespective of the pleas taken by the management. The dispute in the case in hand cannot be said to be stale for the simple reason that there is no previous adjudication of the matter between the parties from a competent court nor that there is inordinate delay in approaching this Tribunal by the claimants.

10. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

11. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal Ex.WW4/1 that that names of Shri Dharam Pal, Manoj Kumar and Shri Anand finds mention at serial No.14, 17 and 19 respectively in the list . There are also averments in the claim statement that one Shri Jai Chand has also been granted pay scale of Chaudhary by the management of MCD and Sultan Singh and others vs. MCD, who were doing work of acting Chaudhary , vide judgement of the Hon'ble High Court, i.e. in the case of MCD vs. Sultan Singh & others and necessary orders for implementation of the said judgement were issued by MCD.

12. Equally merit-less is the plea taken by the management that the present dispute is not sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour Court Bombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute dies not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

13. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by majority members of the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act.

14. It was strongly contended on behalf of the claimant that juniors to the claimant were allowed to participate in the promotional quota on regular basis but he was denied on the grounds that he was not possessing the requisite qualification of 10th Agriculture.

15. The main attack of the management is that the claimant herein was not having requisite qualification, as such, there is no question of grant of pay scale of Garden Chaudhary to the claimants. There is no merit in the stand taken by the management in its reply, that the claimants herein are not entitled for promotion to the post of Chaudhary inasmuch

as he does not possess the requisite qualification. To my mind, this plea is devoid of any merit inasmuch as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010). Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.
>
> 29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.
>
> 30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

16. It is further clear that SLP was also filed by MCD before the Hon'ble Apex Court vide IA No.2 WP for special leave S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, a such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary. Therefore, stand taken by the management that the claimants herein do not possess requisite qualification is without any merit and has no relevance so far as question of grant of promotion to the post of Garden Chaudhary is concerned.

17. It is not out of place to mention here that even if the claimants herein were not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. There is no question of even plea of delay and laches when management had not led any evidence to prove the same. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while dealing with a similar situation regarding of grant of similar benefits to an employee who was not a party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

> "The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of

the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

18. As a sequel to my above discussion, it is held that Shri Dharam Pal, Shri Anand, Shri Mahender Singh and Shri Manoj Kumar, the claimants herein, are entitled to the pay scale of Garden Chaudhary with effect from 01.01.1994, 01.01.1999, 01.01.2000 and 18.01.2000 respectively and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. The claimants are also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014, i.e the date when his juniors were promoted as regular Garden Chaudhary. Further, case of the claimants Shri Balak Ram and Shri Jasbir Singh have already been granted relief vide separate awards, filed by them separately. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : 16.10.2018

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार विभाग, अहमदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 44/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2018 को प्राप्त हुआ था।

[सं. एल—40012/41/2006—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 44/2007) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Department of Telecom, Ahmedabad and their workmen, which was received by the Central Government on 08.10.2018.

[No. L-40012/41/2006– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad,

Dated 27th August, 2018

Reference: (CGITA) No. 44/2007

1. The General Manager,
   Department of Telecom,
   Microwave Maintenance – II, Navrangpura,
   Ahmedabad (Gujarat)

2. The Director,
   Department of Telecom,
   BSNL (MW), Navrangpura,
   Ahmedabad (Gujarat) …First Party

V/s

The General Secretary,
Kamdar Hit Rakshak Union,
10, Jiviba Complex, Near Cadila Rly. Crossing,Ghodasar,
Ahmedabad (Gujarat) …Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri D.K. Rathod (Union's representative)

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/41/2006–IR(DU) dated 06.06.2007 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of the Kamdar Hit Rakshak Union for regularisation of the services of Shri Kantibhai Kalabhai Parmar in the post of TRM/RM is legal and justified? If yes, to what relief the workman is entitled and from which date?"

1. The reference dates back to 06.06.2007 and received on 26.06.2007 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After receiving the notice by the parties, the second party workman Kantibhai Kalabhai Parmar submitted the statement of claim Ex. 6 alleging that he was working as regular mazdoor since 1983 in the first party The General Manager, Department of Telecom, Microwave Maintenance–II, Navrangpura, Ahmedabad and The Director, Department of Telecom, BSNL (MW), Navrangpura, Ahmedabad. The first party never provided them the attendance cards, pay slips and other documents regarding his employment. He used to serve the first party from 08 AM to 08 PM but suddenly his services were terminated on 23.06.2004 without assigning any reasons and serving any notice, thus his termination of service was violation of provisions of Section 25 F, G and H of the Industrial Disputes Act. Thus he has prayed for reinstatement with full back wages and other consequential benefits.

3. The first party vide its written statement Ex. 8 denied the averments made in the statement of claim and submitted that the dispute has been raised after a expiry of 3 years, hence not tenable in the eye of law as per the decision of the Supreme Court in State of Maharashtra V/s Dattatraya Digamber Birajdar, 2007 LLR 1132 SC. The second party workman was not a regular employee. He was a casual labour on daily wages basis; hence his salary cannot be computed to the amount of Rs.2500/- per month. He was engaged as and when need arise. He never completed 240 days in any calendar year. He was never forced to work for more than permitted hours. Therefore, there was no harassment or vindictment while engaged as casual labour. As he was engaged on need basis, therefore, requirement of notice or notice pay was not applicable. There was no violation of provisions of Section 25 F, G and H of the Industrial Disputes Act.

4. On the basis of the pleadings, the following issues arise:

I. Whether the demand of the Kamdar Hit Rakshak Union for regularisation of the services of Shri Kantibhai Kalabhai Parmar in the post of TRM/RM is legal and justified?

II. To what relief, if any, the concerned workman is entitled to?

5. Both these issues are interrelated, therefore, are decided together.

6. **Issue No. I and II:** The burden of proof of these issues was lying on the workman who submitted his affidavit Ex. 13 wherein he has reiterated the averments made in the statement of claim and has not said anything contrary in his cross-examination. But the workman in his affidavit Ex. 13 has not specifically stated that on what date and also on what post, he was appointed as a permanent employee. He has not submitted any documentary proof that he was appointed as a regular employee. In the absence of the said documents, the workman shall be treated as a casual labour on daily wage basis and appointed as and when need arise as admitted by the first party. He has also not submitted any proof that any other junior casual labour on the muster roll of the first party has been appointed by the first party. Thus the second party workman has miserably failed to proof his case.

7. Hence the reference is liable to be decided against the workman in the manner observed as under: the demand of the Kamdar Hit Rakshak Union for regularisation of the services of Shri Kantibhai Kalabhai Parmar in the post of TRM/RM is not legal and justified. The workman is not entitled for any relief.

8. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उप–मंडल अधिकारी (टेलीफोन), बीएसएनएल, डीसा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 552/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2018 को प्राप्त हुआ था।

[सं. एल–40012/256/2002–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 552/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Sub-Divisional Officer (Telephone), BSNL, Deesa and others and their workmen, which was received by the Central Government on 08.10.2018.

[No. L-40012/256/2002– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad,

Dated 04th September, 2018

Reference : (CGITA) No. 552/2004

1. The Sub-Divisional Officer (Tele.),
   BSNL, Deesa Telephone Exchange,
   Deesa (B.K.) – 385536
2. The Chief General Manager,
   Telecom Department, Bharat Sanchar Nigam Limited, Khanpur,
   Ahmedabad (Gujarat) – 380001
3. The General Manager Telecom,
   Telecom Department, Joravar Palace,
   Palanpur (B.K.) – 385001 …First Parties

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007 …Second Party

For the First Party : Shri H.R. Raval
For the Second Party : Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/256/2002–IR(DU) dated 17.04.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Telecom District Manager, Palanpur/SDOT, Deesa, BSNL (Telecom Department) in terminating the services of Shri Jetmalji Talaji Thakor is legal, proper and justified? If not, to what relief the concern workman is entitled to and since when?"

1. The reference dates back to 17.04.2003 and received on 12.05.2003 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. In response to the notice issued to the parties, the second party union submitted the statement of claim Ex. 8 on 20.09.2005 and the first party submitted the written statement Ex. 9 on 26.06.2007. The case was fixed for evidence of the second party union but despite giving numbers of opportunities, the second party union refrained to lead evidence.

3. Today on 04.09.2018, Shri Chintan Gohel, advocate on behalf of the second party stated in Tribunal that the second party workman Jetmalji Talaji Thakor is not in his contact since long.

4. Thus it appears that the second party workman is not willing to prosecute the case.

5. Thus the reference is disposed of in the absence of the evidence of the second party workman with the observation as under: "the action of the management of Telecom District Manager, Palanpur/SDOT, Deesa, BSNL (Telecom Department) in terminating the services of Shri Jetmalji Talaji Thakor can be said to be legal, proper and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, अहमदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1219/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2018 को प्राप्त हुआ था।

[सं. एल–40012/211/2002–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 1219/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL, Ahmedabad and their workmen, which was received by the Central Government on 08.10.2018.

[No. L-40012/211/2002– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 05th September, 2018

Reference : (CGITA) No. 1219/2004

The General Manager,
Telecom District,
Bharat Sanchar Nigam Limited,
Amreli (Gujarat) – 365601 …First Party

V/s

Shri Ramesh Ratilal Chauhan,
C/oSaurashtra Mazdoor Sangh,
Majoor Madhi, Bhaktinagar Circle,
Rajkot (Gujarat) …Second Party

For the First Party : Shri N.K. Trivedi
For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/211/2002–IR(DU) dated 21.02.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the General Manager, Telecom District, Bharat Sanchar Nigam Limited, Amreli in terminating the service of Shri Ramesh Ratilal Chauhan w.e.f. 01.08.1995 without following the provisions of the I.D. Act, 1947 is legal and justified? If not, then to what relief the concerned workmen are entitled to and from which date?"

1. The reference dates back to 21.02.2003 and received on 10.03.2003 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After submitting the statement of claim and written statement by the respective parties and also partly leading evidence by the workman, the workman Ramesh Ratilal Chauhan has expired since long as informed by the advocates of the parties. No legal heirs have moved any application for substitution in place of the workman. It is also noteworthy that none has been responding on behalf of the workman since long.

3. Thus the reference is finally disposed of as abate.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेशक, केन्द्रीय पशु प्रजनन फार्म, सूरत एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1395/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/174/1996—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 1395/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Central Cattle Breeding Farm, Surat and their workman, which was received by the Central Government on 08.10.2018.

[No. L-42012/174/1996– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 05th September, 2018

Reference: (CGITA) No. 1395/2004

The Director,
Central Cattle Breeding Farm,
Dhamrod, Tahsil Magrol,
Surat (Gujarat) … First Party

V/s

Smt. Rupali Ratna,
C/o G.I.D.C. Employees Union,
Parsiwad,
Ankleshwar (Gujarat) … Second Party

For the First Party : None
For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/174/96–IR(DU) dated 14.10.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management through the Director, Central Cattle Breeding Farm, P.O. Dhamrod, Surat in terminating the services of Smt. Rupali Ratna is justified and legal? If not, to what relief the workman is entitled to?"

1. The reference dates back to 14.10.1997 and received on 24.10.1997 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, both the parties submitted the statement of claim Ex. 4 and written statement Ex. 5 on 16.07.1998 and 21.09.1998.

3. The second party Smt. Rupali Ratna, C/o G.I.D.C. Employees Union, Parsiwad, Ankleshwar, hereinafter referred to as "second party workman" in his statement of claim has alleged that she has been working as a labour since April 1984. He has been working honestly and faithfully. No notice or charge-sheet was served on her during course of employment but her services were terminating w.e.f. July, 1993 without showing any reason or following due process of

law. She moved an application before the Assistant Labour Commissioner against the said termination but the settlement could not become possible, therefore, the dispute was referred to this tribunal for adjudication. She has further alleged that she worked for more than 240 days in every calendar year and her termination without giving notice and paying retrenchment compensation is violative of provisions of Industrial Disputes Act as well as principle of natural justice. Therefore, she has prayed for declaring termination of her service as illegal and for reinstatement with back wages.

4. The first party in his written statement Ex. 5 submitted that the averments made in the statement of claim by the workman are false and against facts. The Tribunal has no jurisdiction to entertain the present reference. The true facts are that the second party workman was engaged as a Seasonal Agricultural Worker, therefore, not a casual labour. She never completed 240 days in any calendar year except 1986 and 1987. The workman was never retrenched. She himself stop coming for duty at her own will. Therefore, the prayer sought by the second party workman may be rejected.

5. The second party workman submitted documents vide list Ex. 7 showing the working days during the whole period, attendance and voucher slips.

6. On the basis of the pleadings, the following issues arise:

I. Whether the action of the management through the Director, Central Cattle Breeding Farm, P.O. Dhamrod, Surat in terminating the services of Smt. Rupali Ratna is justified and legal?

II. To what relief, if any, the concerned workman is entitled to?

7. Both these issues are interrelated, therefore, are decided together.

8. **Issue No. I and II:** The burden of proof of these issues was lying on the second party workman. The second party submitted the affidavit of Smt.Rupali Ratna wherein she has reiterated the averments made in the statement of claim. She has not stated anything contrary to her examination-in-chief.

9. The first party has not led any evidence.

10. The second party has submitted written arguments stating that in O.A. No. 456/2012, Smt. Badaliben Parmar and others V/s. Union of India, the Central Administrative Tribunal in similar matter passed the order as under: "In view of the above, we may further observe the applicants while claiming the benefit of temporary status under the Scheme are bound by all the clauses in the said scheme. Sub clause (iv) of Clause 4 does not specifically exclude the right for bringing them into the permanent establishment unless they are selected through regular selection process for Group D posts. Therefore, we declare that the applicants are not entitled to be brought into the permanent establishment unless they are selected through selection process for Group D posts. So far as the claim for payment of wages etc., we hold that the same shall be regulated in terms of Clause 5 of said same Scheme 1993. For the foregoing, we declare that the applicants are entitled for grant of temporary status in terms of the Scheme called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, which came into force with effect from 01.09.1993. We hold that the mere fact that the applicants were granted temporary status will not confer any right for them being brought to the permanent establishment unless they are selected through regular selection process for Group D posts. They are entitled for the wages in terms of Clause 5 of the said scheme."

11. The second party has further referred Central Animal Breeding Farm V/s Badli Ramsingh, Special Civil Application No. 15582/2003 decided on 15.04.2010 by Gujarat High Court wherein the High Court held that the workmen were appointed de-hors of the recruitments rules as casual employee. They were working on daily wage basis and were not in continuous service of the whole calendar year. Considering the fact that the petitioner being a public establishment i.e. Central Animal Breeding Farm, a public establishment, therefore, back wages of 50% are reduced to 25% from the date of the order of reference but confirmed the order of reinstatement.

12. The second party has further referred Deepali Gundu Surwase V/s Kranti Junior Adhyapak Mahamandal and others, 2013 (10) SC C 324, Bhuveshwar Kumar Dwidedi V/s M/s Hindalco Industries, 2014 (11) SC C 85, wherein the apex court held that in the case of illegal termination, the normal is reinstatement with full back wages.

13. The second party has further referred Raghubir Singh V/s Haryana Roadways Transport Corporation, 2014 AIR SC W 5515, wherein the apex court ordered the reinstatement with 60% back wages in the case of termination on the ground of criminal misconduct and the workman was acquitted by the criminal court.

14. The second party has further referred Mackinon Mackenzie and co. Ltd., V/s Machinon Employees Union, AIR 2015 (SC) 1373, Durgapur Casual Workers Union V/s Food Corporation of India and others, 2015 (1) LLJ 160, State Trading Corporation of India Ltd. V/s Sushila Premjibhai Majithia and anr. Reported in GLR XLI (4) 3412 and Medical Officer, Primary Health Centre Surendranagar V/s Dashrathsinh Gajubha Zala, 2012 (5) GLR 4085, wherein the apex court has held that the workman who has worked for more than 240 days in a calendar year has a right of protection under Section 25 F of the Industrial Disputes Act.

15. I considered the aforesaid laws but I would like to refer the provisions of Section 2 (j) of the Industrial Disputes Act wherein the Industry has been defined. The provisions of Section 2 (j) say that the following shall not be the Industry:

(1) Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation – For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) Hospitals or dispensaries; or

(3) Educational, scientific, research or training institutions; or

(4) Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) Khadi or village industries; or

(6) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) Any domestic service; or

(8) Any activity being a profession practised by an individual or body of individuals, if the number of persons employed, by the individual or body of individuals in relation to such profession is less than ten; or

(9) Any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

16. Thus the reference is barred by the provisions of Section 2 (j) of the Industrial Disputes Act but the workman has submitted a copy of reinstatement order of the workmen namely Smt. Badli Ramsingh, Nanu Mansingh Vasava, Somi Nanu Vasava, P.L. Parmar, Savitaben Sevabhai and Madhuben Lulla who have been reinstated by the Director, Central Cattle Breeding Farm, vide order dated 19.03.2011. These workmen were as appears from the order dated 19.03.2011 have been reinstated as casual worker in pursuance of the order of High Court passed in SCA No. 15582/2003 with Special Applications Numbers 15593 to 15597 of 2003.

17. Though the present reference is not maintainable under Section 2 (j) of the Industrial Disputes Act but as a parity to the reinstatement letter dated 19.03.2011 discussed in Para 16, the workman is entitled to be re-engaged as causal worker without any back wages on the basis of the principle of "no work no pay". Both the issues are decided accordingly.

18. The first party is directed to re-engage the second party workman Smt. Rupali Ratna as Casual Worker within 30 days from the publishing of the award in the light of the order dated 19.03.2011 of the Director, Central Cattle Breeding Farm as parity. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 17/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/21/2015—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 17/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/21/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No.17 of 2015

Between :

Sri Chandra Shekhar Prasad son of Sri Munni Lal,
Sri Vishnu Shukla, L-21 Barra-6 Kanpur.

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Chakeri, Kanpur.

3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur.

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/21/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: "Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Chandra Shekhar Prasad son of Sri Munni Lal workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity of Security Guard with effect from 5th June, 2010 and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s. Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons

whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 in their reply has denied the claim petition of the workman in its entirety on the ground that the claim petition is patently false, frivolous and consisting of contradictory facts with a view to embarrass the answering opposite party to extort money. It is also alleged that although all of the workmen employed were independently recruited by Respondent no.3, except only one workman namely Vinod Kumar working with the previous sub contractor i.e. Respondent no.2 who expressed his desire to work with the answering respondent No.3 and the claimant has never approached the answering respondent for his recruitment and there is no contractual relation or master servant relations with the claimant workman in any manner whatsoever and there is no cause of action against the answering respondent No.3.

7. On Merit of the case it is alleged by the answering opposite party no.3 that the petitioner had deliberately and intentionally made vague statements as if the answering respondent was also concerned for the "nitty-gritty" during his alleged service period and the claimant had never approached the answering opposite party for his recruitment and as such there is no contractual or master-servant relation between the claimant workman and the answering respondent No.3 in any manner whatsoever. Therefore, from the pleadings itself it is clear that the petitioner has not claimed any relief agaist the answering opposite party No.3. It is pertinent to mention that the answering opposite party has repeatedly averred the same version as has been discussed above, therefore, there is no need to reiterate the same. In any view of the matter the claim petition of the workman is liable to be rejected out rightly being devoid of merit.

8. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

9. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

10. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

11. The application moved by the representative of the workman was not opposed by opposite party.

12. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

13. Reference is therefore, answered accordingly in the aforesaid terms.

14. Award as above.

Date : 0910.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 16/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/20/2015—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 16/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/20/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 16 of 2015

Between :

Sri Prem Shanker Gupta son of Sri Ram Sewak Gupta,
c/o Sri Vishnu Shukla, L-21 Barra-6 Kanpur.

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Chakeri, Kanpur.

3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/20/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: ''Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Prem Shanker Gupta son of Late Ram Sewak workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity of Security Guard with effect from 5th March, 2003 and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his

version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or non deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed. Opposite party no.3 in their reply has denied the claim petition of the workman in its entirety on the ground that the claim petition is patently false, frivolous and consisting of contradictory facts with a view to embarrass the answering opposite party to extort money. It is also alleged that although all of the workmen employed were independently recruited by Respondent no.3, except only one workman namely Vinod Kumar working with the previous sub contractor i.e. Respondent no.2 who expressed his desire to work with the answering respondent no.3 and the claimant has never approached the answering respondent for his recruitment and there is no contractual relation or master servant relations with the claimant workman in any manner whatsoever and there is no cause of action against the answering respondent no.3.

6. Opposite party no.3 in their reply has denied the claim petition of the workman in its entirety on the ground that the claim petition is patently false, frivolous and consisting of contradictory facts with a view to embarrass the answering opposite party to extort money. It is also alleged that although all of the workmen employed were independently recruited by Respondent no.3, except only one workman namely Vinod Kumar working with the previous sub contractor i.e. Respondent no.2 who expressed his desire to work with the answering respondent no.3 and the claimant has never approached the answering respondent for his recruitment and there is no contractual relation or master servant relations with the claimant workman in any manner whatsoever and there is no cause of action against the answering respondent no.3.

7. On Merit of the case it is alleged by the answering opposite party no.3 that the petitioner had deliberately and intentionally made vague statements as if the answering respondent was also concerned for the "nitty-gritty" during his alleged service period and the claimant had never approached the answering opposite party for his recruitment and as such there is no contractual or master-servant relation between the claimant workman and the answering respondent no.3 in any manner whatsoever. Therefore, from the pleadings itself it is clear that the petitioner has not claimed any relief against the answering opposite party no.3. It is pertinent to mention that the answering opposite party has repeatedly averred the same version as has been discussed above, therefore, there is no need to reiterate the same. In any view of the matter the claim petition of the workman is liable to be rejected out rightly being devoid of merit.

8. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

9. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

10. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

11. The application moved by the representative of the workman was not opposed by opposite party.

12. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

13. Reference is therefore, answered accordingly in the aforesaid terms.

14. Award as above.

Date : 09.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 15/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/19/2015—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case CR No. 15/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/19/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No.15 of 2015

Between :

Sri Vinod Kumar Sahu son of Sri Kanhaiya Lal,
C/o Sri Vishnu Shukla, L-21 Barra-6 , Kanpur.

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.
2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Chakeri Kanpur.
3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur.

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/19/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: ''Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Vinod Kumar Sahu son of Sri Kanhaiya Lal workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity of Security Guard with effect from 5th October, 2003, and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the

service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 has denied the contents of the claim petition on the ground that it is baseless, misconceived and misleading. It is admitted by the opposite party no.3 that the workman was engaged on contract basis as per contract form containing the prescribed terms and condition of employment in token of the acceptance and the concerned workman was deputed to the opposite party no.2 from time to time. The date of employment as shown by the workman is not correct. The work and conduct is not related to the present matter of dispute. As a matter of fact there was a security contract between opposite party no. 2 and 3 on 01.05.07 which was valid up to 30.04.08 and the same had been extended from time to time till 31.08.2013. The concerned workman was working under the direct control of the opposite party no.2. It is also stated that after termination of contract the services of the workman automatically came to end and it is denied that the answering opposite party no.3 had ever terminated the services of the workman illegally. As such the concerned workman is not entitled to claim the relief of reinstatement from the answering opposite party and the claim of the workman is liable to be rejected being misleading and misconceived.

7. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

8. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

9. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

10. The application moved by the representative of the workman was not opposed by opposite party.

11. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

12. Reference is therefore, answered accordingly in the aforesaid terms.

13. Award as above.

Date : 10.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/18/2015—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case CR No. 14/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/18/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 14 of 2015

Between :

Sri Ranjeet Singh son of Sri Late Raja Singh,,
C/o Sri Vishnu Shukla, L-21 Barra-6, Kanpur.

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Kanpur.

3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/18/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: ''Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Ranjeet Singh son of Late Sri Raja Singh workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity of guard Commander with effect from September 1994 and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 has denied the contents of the claim petition on the ground that it is baseless, misconceived and misleading. It is admitted by the opposite party no.3 that the workman was engaged on contract basis as per contract form containing the prescribed terms and condition of employment in token of the acceptance and the concerned workman was deputed to the opposite party no.2 from time to time. The date of employment as shown by the workman is not correct. The work and conduct is not related to the present matter of dispute. As a matter of fact there was a security contract between opposite party no. 2 and 3 on 01.05.07 which was valid up to 30.04.08 and the same had been extended from time to time till 31.08.2013. The concerned workman was working under the direct control of the opposite party no.2. It is also stated that after termination of contract the services of the workman automatically came to end and it is denied that the answering opposite party no.3 had ever terminated the services of the workman illegally. As such the concerned workman is not entitled to claim the relief of reinstatement from the answering opposite party and the claim of the workman is liable to be rejected being misleading and misconceived.

7. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

8. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

9. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

10. The application moved by the representative of the workman was not opposed by opposite party.

11. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

12. Reference is therefore, answered accordingly in the aforesaid terms.

13. Award as above.

Date : 10.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 13/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/17/2015—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case CR No. 13/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/17/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 13 of 2015

Between :

Sri Vinod Kumar Prajapati son of B.O. Prajapati,
C/o Sri Vishnu Shukla, L-21 Barra-6. Kanpur.

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Kanpur.

3. The Assistant General Manager,
   M/s UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur.

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/17/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: ''Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Vinod Kumar Prajapati son of Sri B O Prajapati workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity Security Guard with effect from 11th August, 2011, and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 in their reply has denied the claim petition of the workman in its entirety on the ground that the claim petition is patently false, frivolous and consisting of contradictory facts with a view to embarrass the answering opposite party to extort money. It is also alleged that although all of the workmen employed were independently recruited by Respondent no.3, except only one workman namely Vinod Kumar working with the previous sub contractor i.e. Respondent no.2 who expressed his desire to work with the answering respondent no.3 and the claimant has never approached the answering respondent for his recruitment and there is no contractual relation or master servant relations with the claimant workman in any manner whatsoever and there is no cause of action against the answering respondent no.3.

7. On Merit of the case it is alleged by the answering opposite party no.3 that the petitioner had deliberately and intentionally made vague statements as if the answering respondent was also concerned for the "nitty-gritty" during his alleged service period and the claimant had never approached the answering opposite party for his recruitment and as such there is no contractual or master-servant relation between the claimant workman and the answering respondent no.3 in any manner whatsoever. Therefore, from the pleadings itself it is clear that the petitioner has not claimed any relief agaist the answering opposite party no.3. It is pertinent to mention that the answering opposite party has repeatedly averred the same version as has been discussed above, therefore, there is no need to reiterate the same. In any view of the matter the claim petition of the workman is liable to be rejected out rightly being devoid of merit.

8. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

9. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

10. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

11. The application moved by the representative of the workman was not opposed by opposite party.

12. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

13. Reference is therefore, answered accordingly in the aforesaid terms.

14. Award as above.

Date: 09.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 12/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल–42012/16/2015–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 12/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/16/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 12 of 2015

Between :

Sri Ramesh Singh Yadav son of Sri Shiv Shanker,
C/o Sri Vishnu Shukla, L-21 Barra-6 Kanpur

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Chakeri, Kanpur.

3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur.

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/16/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: "Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Ramesh Singh Yadav son of Sri Shiv Shanker workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity of Security Guard with effect from 24th Jan., 2007, and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of

relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 has denied the contents of the claim petition on the ground that it is baseless, misconceived and misleading. It is admitted by the opposite party no.3 that the workman was engaged on contract basis as per contract form containing the prescribed terms and condition of employment in token of the acceptance and the concerned workman was deputed to the opposite party no.2 from time to time. The date of employment as shown by the workman is not correct. The work and conduct is not related to the present matter of dispute. As a matter of fact there was a security contract between opposite party no. 2 and 3 on 01.05.07 which was valid up to 30.04.08 and the same had been extended from time to time till 31.08.2013. The concerned workman was working under the direct control of the opposite party no.2. It is also stated that after termination of contract the services of the workman automatically came to end and it is denied that the answering opposite party no.3 had ever terminated the services of the workman illegally. As such the concerned workman is not entitled to claim the relief of reinstatement from the answering opposite party and the claim of the workman is liable to be rejected being misleading and misconceived.

7. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

8. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

9. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

10. The application moved by the representative of the workman was not opposed by opposite party.

11. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

12. Reference is therefore, answered accordingly in the aforesaid terms.

13. Award as above.

Date : 10.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 11/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल–42012/15/2015–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 11/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/15/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 11 of 2015

Between :

Sri Sunder Lal son of Sri Basant,
C/o Sri Vishnu Shukla, L-21 Barra-6 Kanpur

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Kanpur.

3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur

AWARD

1. Central Government, Mol & Employment, vide notification No. L-42012/15/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: "Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., /M/s M5 Security Pvt Ltd., in terminating the services of Sri Sunder Lal son of Sri Basant workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working as security guard with effect from July 1994 and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in25(V)(b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is

surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 has denied the contents of the claim petition on the ground that it is baseless, misconceived and misleading. It is admitted by the opposite party no.3 that the workman was engaged on contract basis as per contract form containing the prescribed terms and condition of employment in token of the acceptance and the concerned workman was deputed to the opposite party no.2 from time to time. The date of employment as shown by the workman is not correct. The work and conduct is not related to the present matter of dispute. As a matter of fact there was a security contract between opposite party no. 2 and 3 on 01.05.07 which was valid up to 30.04.08 and the same had been extended from time to time till 31.08.2013. The concerned workman was working under the direct control of the opposite party no.2. It is also stated that after termination of contract the services of the workman automatically came to end and it is denied that the answering opposite party no.3 had ever terminated the services of the workman illegally. As such the concerned workman is not entitled to claim the relief of reinstatement from the answering opposite party and the claim of the workman is liable to be rejected being misleading and misconceived.

7. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

8. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

9. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

10. The application moved by the representative of the workman was not opposed by opposite party.

11. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

12. Reference is therefore, answered accordingly in the aforesaid terms.

13. Award as above.

Date: 09.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 2018

का.आ. 1609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 19/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.10.2018 को प्राप्त हुआ था।

[सं. एल–42012/23/2015–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 26th October, 2018

S.O. 1609.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 19/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Kanpur and others and their workman, which was received by the Central Government on 24.10.2018.

[No. L-42012/23/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 19 of 2015

Between :

Sri Jai Singh Sengar son of late Raghubir Singh,
C/o Sri Vishnu Shukla, L-21 Barra-6 Kanpur

And

1. The Managing Director,
   M/s. M.5 Security Pvt. Ltd.,
   126 Green View Apartments, Mandi Road,
   New Manglapuri, Mehrauli,
   New Delhi.

2. The General Manager,
   Hindustan Aeronautics Limited,
   Aircraft Division, Transport Aircraft Division, Kanpur.

3. The Assistant General Manager,
   M/s. UP Purva Sainik Kalyan Nigam Ltd.,
   144-A 1st Floor, Vikas Nagar, Kanpur

AWARD

1. Central Government, Mol & Employment, vide notification no. L-42012/23/2015-IR(DU) dated 11.03.15 has referred the following dispute for adjudication to this tribunal: "Whether the action of the management of Hindustan Aeronautics Ltd.,/U.P. Purva Sainik Kalyan Nigam Ltd., M/s. M5 Security Pvt Ltd., in terminating the services of Sri Jai Singh Sengar son of Sri Raghubir Singh workman with effect from 31.08.2013 is just fair and legal? If not to what relief the workman concerned is entitled to?"

2. The case in short as set up by the workman is that he was working in the capacity of Security Guard with effect from 3rd July 2003, and his work and conduct was quite excellent without any complaint from any corner. It is further alleged that several malpractice were prevalent in the office of the opposite parties being so workman was not getting the benefits as enshrined in the book of Statute. The workman through the union approached the Labor Department for the compliance of various labor laws including the provisions of Equal Remuneration Act, Contract Labor Act. The opposite parties deliberately were not complying the provision of Contract Labor Act 1970, as such though the workman was performing his duties as permanent worker throughout the year altogether but he was treated as Contract Laborers and was not paid the wages and other benefits by the opposite parties as per Rule and as provided in 25 (V) (b) of Contract Labor (Regulation and Abolition) Rules. Therefore, the workman through his union approached the Labor Authorities for making compliance of the provisions of relevant Labor Acts. The opposite parties instead of making compliance of the provisions of the Act started to victimize the workman and the services of the workman were dispensed with by the opposite parties w.e.f. 31.08.2013. It is surprising to submit that the management failed to appreciate that on the basis of services rendered by the workman for the last several years and for more than 300 days in every year, he ought to have been regularized and be declared as permanent and be paid wages at par to the counterpart / regular workmen

concerned, but the management terminated his services without compliance of the principles of the natural justice and the provisions of the I.D. Act have been violated.

3. On the basis of above pleadings the workman has prayed for his reinstatement with effect from 01.09.2013 along with wages and all the consequential benefits.

4. Opposite party no.1 and 3 have filed its written statements.

5. Opposite party no.1 has denied the maintainability of the present reference on the ground that different firms have been shown as employer of a single employee viz. Sri Sunder Lal; that the question of termination of the service of single employee on one date by different firms on the face of it is absurd and not maintainable, hence the order of reference suffers from serious ambiguity and infirmity and has become bad in law; M/s Hindustan Aeronautics Limited is registered under the provisions of Contract Labor (Regulation and Abolition) Act, 1970, and the job allotted on contract basis to the contractors are executed by the contractors as such there is no relationship of master and servant between the opposite party no.1 and the workman; that the workman has not disclosed the correct and material information about his status of employment with the opposite party no.1 and factually the workman was never remained in the employment nor he was ever engaged by the opposite party no.1 and he was never appointed by the opposite party no.1 in any capacity hence question of termination of his service by opposite party no.1 does not arise; that the answering opposite party abides all the laws applicable in their letter and spirit and there can be no allegation of flouting any law applicable on the opposite party no.1; the allegations as submitted by the workman in his claim petition are not in conformity with his version and as such are not admitted and it is once again reiterated that there was a job contract with the contractor and he was free to execute the contract with his own labour force and he engaged persons whomsoever he found suitable for execution of his work order and the opposite party has no hand in the employment or non employment or deployment or no deployment by the contractor of the persons engaged by the contractor, as the contractor is a specialized agency for the jobs undertaken by him; that the allegations of the whole claim petition filed by the workman are denied as petitioner has deliberately suppressed and concealed the material facts, therefore, the petitioner is not entitled for any relief as claimed by him in his claim petition and his petition is liable to be dismissed.

6. Opposite party no.3 in their reply has denied the claim petition of the workman in its entirety on the ground that the claim petition is patently false, frivolous and consisting of contradictory facts with a view to embarrass the answering opposite party to extort money. It is also alleged that although all of the workmen employed were independently recruited by Respondent no.3, except only one workman namely Vinod Kumar working with the previous sub contractor i.e. Respondent no.2 who expressed his desire to work with the answering respondent no.3 and the claimant has never approached the answering respondent for his recruitment and there is no contractual relation or master servant relations with the claimant workman in any manner whatsoever and there is no cause of action against the answering respondent no.3.

7. On Merit of the case it is alleged by the answering opposite party no.3 that the petitioner had deliberately and intentionally made vague statements as if the answering respondent was also concerned for the "nitty-gritty" during his alleged service period and the claimant had never approached the answering opposite party for his recruitment and as such there is no contractual or master-servant relation between the claimant workman and the answering respondent no.3 in any manner whatsoever. Therefore, from the pleadings itself it is clear that the petitioner has not claimed any relief against the answering opposite party no.3. It is pertinent to mention that the answering opposite party has repeatedly averred the same version as has been discussed above, therefore, there is no need to reiterate the same. In any view of the matter the claim petition of the workman is liable to be rejected out rightly being devoid of merit.

8. Opposite party no.3 has filed photocopies of certain documents per list dated 29.01.16.

9. Workman has filed rejoinder but therein nothing new has been alleged except reiterating the facts as already alleged by him in his claim petition.

10. The date of hearing of the instant case was 09.10.18 but on the request of both the parties case was preponed and was taken up for hearing on 08.10.18 before the Lok Adalat when the authorized representative for the workman moved an application before the tribunal stating therein that the concerned workman is not contacting with him for the last several months as such it appears that the workman is not inclined to contest the case, therefore, under these circumstances, no option is left to him but to make a request before this tribunal to close the case. Accordingly it was prayed that the present case may kindly be closed as not pressed.

11. The application moved by the representative of the workman was not opposed by opposite party.

12. Therefore, after having heard the learned authorized representatives for both the parties considering the facts and circumstances of the case, it is held that the workman is not entitled to any relief.

13. Reference is therefore, answered accordingly in the aforesaid terms.

14. Award as above.

Date : 11.10.18

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2018

का.आ. 1610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 44/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2018 को प्राप्त हुआ था।

[सं. एल–40012/20/2015–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th October, 2018

S.O. 1610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 44/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and others and their workman, which was received by the Central Government on 08.10.2018.

[No. L-40012/20/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUML-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of September, 2018

INDUSTRIAL DISPUTE No. 44/2015

Between:

Sri R.V. Raju,
S/o Yellamandha Raju,
R/o 3-13-110/5/2, Street No.4,
Vasavi Nagar, Ramanthapur,
Hyderabad – 500 001. … Petitioner

AND

1. The Chief General Manager,
   BSNL, Office of the CGM,
   Telecommunications,
   A.P. Circle, Hyderabad – 500 001.
2. The General Manager,
   Hyderabad Telecom District,
   Suryalok Complex, Abids,
   Hyderabad – 500 001.
3. The Principal,
   Regional Telecom Training Centre,
   Gachibowli, Hyderabad – 500 001. …Respondents

Appearances:

For the Petitioner : M/s. G. Ravimohan & Vikas Sharma, Advocate

For the Respondent : M/s. S. Prabhakar Reddy & S. Rajeshwari, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/20/2015-IR(DU) dated 20.5.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of BSNL, Office of the CGM, Telecommunications, and their workman. The reference is,

SCHEDULE

"Whether the action of the Management of BSNL in terminating from the service of Shri R.V. Raju w.e.f. July, 2008 is illegal, arbitrary and violation of the Section 25F of ID Act, 1947? If yes, to what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 44/2015 and notices were issued to the parties concerned.

2. The case stands posted for evidence of the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to prosecute his case. But, inspite of repeated calls, the Petitioner remained absent. This case is of the year 2015. Non-appearance of the Petitioner in time, clearly indicates that perhaps the parties have settled the dispute and the Petitioner has no claim to raise. Hence, it is not desirable to linger the case to any further date. Thus, the case of the Petitioner is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of September, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 अक्तूबर, 2018

का.आ. 1611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कलकत्ता टेलीफोन प्रबंधन के के संबद्ध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 37/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.10.2018 को प्राप्त हुआ था।

[सं. एल—40012/88/1992—आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th October, 2018

S.O. 1611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 37/1993) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Employers in relation to the Management of Calcutta Telephones and their workman, which was received by the Central Government on 01.10.2018.

[No. L-40012/88/1992– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 37 of 1993

Parties : Employers in relation to the management of Calcutta Telephones

AND

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. T. Chowdhury, Learned Counsel

On behalf of the Workmen : Mr. M. Dutta, Learned Counsel.

State: West Bengal. Industry: Telephone

Dated: 26th September, 2018

AWARD

Consequent upon termination of the workman, Shri Gopal Maity on 04.08.1990 by the Calcutta Telephones and Industrial dispute having been arisen, the Government of India, Ministry of Labour vide order No.L-40012/88/92-IR(DU) dated 17.09.1993 has referred the dispute in the following terms:

> *"Whether the action of the management of Calcutta Telephones, D/o Telecommunication, Taher Mansion, 8 Bentic Street, Calcutta – 1 in terminating the services of Shri Gopal Maity, Casual Labour w.e.f. 4.8.90 is proper and justified? If not, what relief the workman is entitled to?"*

2. The factual matrix of the case is that the workman, Shri Gopal Maity was an employee of Calcutta Telephones. His services were terminated on 04.08.1990 by way of refusal of employment by Calcutta Telephones. Thereafter, the dispute is referred to this Tribunal whereupon notices were issued to both the parties. The workman concerned put in his appearance and filed his statement of claim stating therein that he joined Calcutta Telephones on 1st February, 1987 at Budge Budge Exchange and worked continuously till 31st July, 1990. During 1st February, 1987 to 31st August, 1987 he was posted at Budge Budge under 77 Exchange under ACG-17 account. Thereafter he was sent to 77 Exchange at Behala. According to the statement of claim the workman concerned worked at Budge Budge Exchange for 184 days from 1st February, 1987 to 31st August, 1987. Thereafter at 77 Exchange at Behala for 141 days from 1st September, 1987 to 18th May, 1989 and then at Budge Budge from 1st June, 1989 to 3rd August, 1990. In total the workman concerned worked for 325 days. Thus, it is pleaded that he had worked over 240 days during August, 1989 to 3rd August, 1990. So the services of the workman could not have been terminated or retrenched without payment of retrenchment compensation and notice. The management of Calcutta Telephones has acted most arbitrarily and illegally and in gross violation of the principles of natural justice and his termination is illegal. Therefore, reinstatement with full back wages has been claimed.

3. The management filed its written statement in which it has been pleaded interaiila that the workman concerned was never sponsored by the Employment Exchange. He was not recruited against sanctioned post. His status was that of casual mazdoor. Calcutta Telephones is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, therefore, reference is not maintainable. The statement of the workman concerned regarding proof of days he worked is wholly incorrect, erroneous and far from truth. It is also pleaded that during the month of October, 1989 the workman had worked for 8 days, in January, 1990 for 10 days, in April, 1990 for 9 days, in May, 1990 for 29 days, in June, 1990 for 10 days and July, 1990 for 10 days. In total he has worked only for 76 days. His working was in no way continuous service as has been contemplated and defined in the Act. Thus the workman is not at all entitled to any statutory benefit as envisaged in Section 25F of the Industrial Disputes Act, 1947.

4. In support of their respective case the workman concerned examined himself as WW-01 and on behalf of the management four witnesses, namely, S/Shri Subhas Chandra Das, Pranab Kumar Basu, Kamakhsya Roy and Bharat Chandra Dhali have been examined. Apart from this, some documentary evidence have also been filed by both parties which shall be referred in this award at the relevant place.

5. Though the management has challenged the maintainability of reference on the ground that Calcutta Telephones is not an industry, but in course of argument the learned counsel has not much emphasized on this issue and agreed with the findings of Hon'ble Calcutta High Court as given in Tapan Kumar Jana v. Calcutta Telephones and Others, 1981-II-LLJ 382 wherein wherein the Division Bench of Hon'ble Court has observed that the telephone service which is public utility service is an industry. It may be that a public utility service carried out by the Government but that will be quite irrelevant in considering whether it is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

Nothing has been cited by the learned counsel for the management contrary to the above finding. Therefore, relying on above case law I come to the conclusion that Calcutta Telephone is an industry and even a casual worker is a workman.

6. Now the next question for consideration is whether it was incumbent upon the management to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 before terminating the services of the workman under reference. Section 25F of the Industrial Disputes Act, 1947 reads as follows:

> *"**25F. Condition precedent to retrenchment of workmen** – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –*
>
> (a) *the workman has been given one month's notice in writing Indicating the resons for retrenchjment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months: and*
>
> (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

7. Thus provisions of Section 25F of the Act applies to the workmen who have been in continuous service for not less than one year. If the workman concerned has been in continuous service then before his retrenchment, one month's notice in writing or pay in lieu of notice and retrenchment compensation were required to be paid.

8. Section 25B of the Act introduces a deemed fiction as to in what circumstances a workman is to be deemed in continuous service. Sub-section (1) of Section 25B provides a deeming fiction where a workman is in continuous service for certain period, he shall be deemed in continuous service for that period if his service is interrupted on account of sickness or authorized leave or an accident of a strike which is not illegal or lockout or a cessation of work. These interruptions have to be ignored to treat the workman in uninterrupted service. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of Sub-section (1) for a period of one year or six months, he should be deemed to be in continuous service for a period of one year or six months as the case maybe if the workman during the period of twelve months just preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days.

9. Learned counsel for the management has submitted that the workman concerned was not in continuous service of one year as his service period was interrupted and he was employed intermittently. He was also not covered by Sub-section (2) of Section 25B of the Act as his total period of working during the preceding 12 months of termination was less than 240days. Therefore, protection of Section 25F of the Act was not available to the workman concerned.

10 On the question of burden of proof as to completion of 240 days of continuous work in the preceding year, Hon'ble the Apex Court in **Range Forest Officer** v. **S.T. Hadimani**, 2002 (93) FLR 179 has held that –

> *"In our opinion the Tribunal was not right in placing onus on the management without first determining on the basis of cogent reason evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had, in fact, worked for 240 days in the year preceding his termination. Filing an affidavit is only his own statement in his favour and that cannot be recorded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."*

11. In **Rajasthan State Ganganagar S. Mills Ltd.** v. **State of Rajasthan & Another**, 2004(4) LLN 845 : **Municipal Corporation, Faridabad** v. **Srinibas**, 2004 (4) LLN 785 and **Madhya Pradesh Electricity Board** v. **Hariram** 2004 (4) LLN 839 Hon'ble the Apex Court reiterated the principles that burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove that the factum of his being in employment of the employer.

12. Referring and analyzing these earlier judgments in above case laws Hon'ble the Apex Court in **R.M. Yellatti** v. **The Assistant Executive Engineer**, reported in Supreme Court Cases (L & S) page – 1 again held that burden lies on the workman concerned. The relevant paragraphs of the judgment may be quoted as under:

> *"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidences Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general*

principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged uponthe workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman were not suffice in the matter of discharge of the burden placed by law on the workman to prove that hehad worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case."

13. Above case laws have again been relied on by Hon'ble the Apex Court in Krishna Bhagya Jala Nigam Ltd. v. Mohammed Rafi, 2009 (123) FLR 612 wherein burden of proof has been held to be on workman concerned to prove that he had worked for 240 days in a given year.

14. Thus applying above principles of law as propounded by Hon'ble the Apex Court in the above mentioned cases to the facts of the present case, burden lies on the workman concerned, Shri Gopal Maity to prove that he had worked for 240 days in the year preceding his termination. Though no formal termination order was passed by the management, however, it is admitted case between the parties that the workman was denied work since 04.08.1990 which in legal parlance amounts to termination. Hon'ble the Apex Court in H.D. Singh v. Reserve Bank of India, AIR 1986 SC 132 has propounded that striking off the name of the workman from rolls by the employer amounts to termination of service and such termination is retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and if such retrenchment is effected in violation of mandatory provisions contained in Section 25F of the Act, same is invalid.

15. The relevant date for counting of 240 working days is 4th August, 1990. In order to prove that the workman concerned had worked for 240 days in preceding year of his termination a certificate issued by Shri Dhukhiram Ghosh and alleged extract of attendance register have been filed on behalf of the workman which are Ext. W-03 and Ext. W-04. But the writer of the certificate and the person who prepared the attendance sheet of which Ext. W-04 are alleged to be extract, are not produced in the witness box. Though application had been moved on behalf of the workman to summon attendance register etc. to prove his continuous service, same was rejected by this Tribunal on the ground that no attendance sheet was ever prepared by the management. On behalf of the management copies of vouchers bywhich wages were said to be given to the workman concerned have been filed which are Exhibits M-2, M-2/1 to M-2/9. These vouchers bear signature of the workman, Shri Gopal Maity which is not denied. On the basis of above documents management has submitted that the workman concerned during the given period had only worked for 123 days. The argument of the management has got substance. The total period counted from the above vouchers does not come to 240 days. In absence of any documentary evidence in favour of the workman concerned, there is nothing to disbelieve the documents submitted by the management. Though the application to summon muster roll or attendance register was rejected by the Tribunal on 19.09.2002 on the plea of management that no such muster roll or attendance register was ever maintained, but no adverse inference can be drawn against the management in absence of any plea by the workman regarding suppression of documents. Only evidence in favour of the workman is oral evidence which is self-serving statement. Oral evidence given by the workman is not sufficient to discharge his onus.

16. In these circumstances, it is not established that the workman concerned worked continuously for one year as required under Section 25F of the Industrial Disputes Act, 1947. Hence protection of Section 25F of the Industrial Disputes Act, 1947 was not available to him and the management was not obliged to comply with the provisions of Section 25F of the Act.

17. In view of above, the answer to the question under reference is in affirmative and termination of service of the workman, Shri Gopal Maity is found to be legal and justified. He is not entitled to any relief.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 25th September, 2018

नई दिल्ली, 30 अक्तूबर, 2018

का.आ. 1612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कलकत्ता टेलीफोन के प्रबंधन के संबंध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 06/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2018 को प्राप्त हुआ था।

[सं. एल–40012/99/2006–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th October, 2018

S.O. 1612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 06/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Calcutta Telephones and their workman, which was received by the Central Government on 28.09.2018.

[No. L-40012/99/2006– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 06 of 2007

Parties : Employers in relation to the management of Calcutta Telephones

AND

Their workmen

Present : Justice Ravindra Nath Mishr, Presiding Officer

Appearance:

On behalf of the Management : Mr. S.K. Karmakar, Learned Counsel

On behalf of the Workmen : Mr. B. Pal, Learned Counsel

State: West Bengal. Industry: Telephone

Dated: 20th September, 2018

AWARD

Consequent upon the termination of service of workman, Shri Mintu Mukherjee by the management of Calcutta Telephones an industrial dispute arose and referred by the Government of India, Ministry of Labour & Employment vide Order No.L-40012/99/2006-IR(DU) dated 15.02.2007 in exercise of its powers conferred in Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 in following term:

> *"Whether the action of the management of the Chief General Manager, BSNL, Calcutta Telephones, Kolkata in terminating the services of their workman Shri Mintu Mukherjee w.e.f. 28.2.2000 is legal and justified? If not, to what relief the workman is entitled to?"*

2. Brief facts, bereft of unnecessary details, are that Shri Mintu Mukherjee was an employee of Calcutta Telephones who was arrested on 7th of January, 20000 and taken into police custody in connection with a criminal case lodged by his wife under Section 406 and 498A of Cr.P.C. from where he was released on bail on 28th February, 2000. After release on bail the workman concerned went to resume his duties as usual on 29th February, 2000, but he was not allowed to join his duties. He made protest verbally as well as in writing by his letter dated 19th May, 2000 with a prayer for reinstatement with due salary, but in vain. It is also submitted that his termination order having been passed without giving any opportunity to the workman and without following any principles of law is prima facie illegal and unjustified. Therefore, the workman is entitled for reinstatement in service with full back wages and other consequential relief.

3. The management of Calcutta Telephones filed written statement pleading interallia that the reference is not maintainable as the workman concerned has not acquired any legal status or legal character to raise the issue of alleged termination of service. The workman concerned was engaged on temporary basis as mazdoor. He was arrested on 07.01.2000 in connection with criminal case No. 337 dated 26.11.1999 under Section 406 and 498A of Indian Penal Code and remained in custody upto 28.02.2000. The criminal case is still pending before the Additional Chief Judicial Magistrate, Sealdah Court. He remained absent from his duty with effect from 07.01.2000. It is also pleaded that unless a temporary employee works for not less than 240 days and is qualified for permanent in terms of rules and regulations, there is no scope of making an employee permanent. The concerned workman has not worked for 240 days.

4. In support of their respective case the workman concerned examined himself as WW-01 and on behalf of the management Shri Bhola Nath Ghosh has been examined as MW-01. Apart from this, some documentary evidence have also been filed by both parties which shall be referred in this award at the relevant place.

5. I have heard the learned counsel for both parties and gone through the oral as well as documentary evidence placed on record.

6. It is admitted case of the parties that the workman concerned was arrested in connection with a criminal case on 07.01.2000 and he remained their in custody till 28.02.2000. It is contended on behalf of the workman concerned that when after release from the custody, he went to join duty, the management of Calcutta Telephones refused to permit him to join. This fact is not disputed that the workman concerned was not permitted to join his duty which in legal parlance

amounts to termination of service. Though legal character of the workman concerned has been denied by the management, but the document filed by the workman concerned as Exhibit W-01 shows that vide order dated 30th June, 1999 Shri Mintu Mukherjee had been given temporary status with effect from 9th June, 1999. This fact is also not denied by the management as it is evident from what has been stated in paragraph 10 of the written statement of the management. However, the date of temporary status has been shown as date of engagement of the workman concerned in the industry. When the workman concerned has been given temporary status, denial to join him duties amounts to termination of service. Hon'ble the Apex Court in S.D. Singh v. Reserve Bank of India, AIR 1986 SC 132 has propounded that striking off the name of the workman from the rolls by the employer amounts to termination of service and such termination is retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and if such retrenchment is effected in violation of the mandatory provisions contained in Section 25F of the Act, same is invalid.

7. The crucial point for decision of this case is whether the management complied with the provisions of Section 25F of the Industrial Disputes Act, 1947 before termination of the workman concerned. Section 25F of the Industrial Disputes Act, 1947 reads as below:

> *"**25F. Condition precedent to retrenchment of workmen** – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employeruntil –*
>
> *(a) the workman has been given one month's notice in writing indicating the resons for retrenchjment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months: and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

8. Now before the compliance of provisions of Section 25F may be examined, it is necessary to look into whether the workman concerned has been in continuous service for not less than one year which is condition precedent for the application of Section 25F of the Act. If the answer is in the affirmative then only clause (a) and clause (b) of Section 25F of the Industrial Disputes Act, 1947 apply.

9. "Continuous service" has been defined under Section 25B of the Industrial Disputes Act, 1947 according to which where a workman is not in continuous service within the meaning of clause (1) of Section 25B for the period of one year or six months he shall be deemed to be in continuous service under an employer when he has actually worked for not less than two hundred and forty days. The case of the management is that the workman concerned had not worked for 240 days during the preceding 12 months as mazdoor (on daily wages), therefore, he cannot claim any protection of Section 25F of the Industrial Disputes Act. However, on behalf of the workman under reference it has been argued that he had completed working for more than 240 days in a year. Therefore, his retrenchment is illegal as condition precedent as contained in Section 25F of the Act were not complied with. Learned counsel for the workman for his argument has relied on Ext. W-01 which is order dated 30th June, 1999 passed by the Department of Telecommunication which shows that the workman was given temporary status from 9th June, 1999 and this temporary status could have been given to the workman concerned only when his service was continuous for at least one year as it is evident from the circular issued by the department on 7th November, 1989 Ext. M-04. On the basis of Exhibit W-01 and Exhibit M-04 it is pleaded that the workman concerned was working continuously without any interruption till he was arrested on 7th January, 2000.

10. Per contra learned counsel for the management has contended that burden lies on the workman concerned to prove by cogent evidence that he worked for uninterrupted period of one year or 240 days in preceding one year of his termination in case of interrupted period of service. He has also submitted that mere appearance of the workman concerned in the witness box is not sufficient to prove his case.

11. On the question of burden of proof as to the completion of 240 days of continuous work in the preceding year, Hon'ble the Apex Court in **Range Forest Officer** v. **S.T. Hadimani**, 2002 (93) FLR 179 has held that –

> *"In our opinion the Tribunal was not right in placing onus on the management without first determining on the basis of cogent reason evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had, in fact, worked for 240 days in the year preceding his termination. Filing an affidavit is only his own statement in his favour and that cannot be recorded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable tobe set aside."*

12. In **Rajasthan State Ganganagar S. Mills Ltd.** v. **State of Rajasthan & Another**, 2004(4) LLN 845 : **Municipal Corporation, Faridabad** v. **Srinibas**, 2004 (4) LLN 785 and **Madhya Pradesh Electricity Board** v. **Hariram** 2004 (4) LLN 839 Hon'ble the Apex Court reiterated the principles that burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is

for the workman to adduce evidence apart from examining himself to prove that the factum of his being in employment of the employer.

13. Referring and analyzing these earlier judgments in above case laws Hon'ble the Apex Court in **R.M. Yellatti** v. **The Assistant Executive Engineer**, reported in Supreme Court Cases (L & S) page – 1 again held that burden lies on the workman concerned. The relevant paragraphs of the judgment may be quoted as under:

> *"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidences Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman were not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case."*

14. Above case laws have again been relied on by Hon'ble the Apex Court in Krishna Bhagya Jala Nigam Ltd. v. Mohammed Rafi, 2009 (123) FLR 612 wherein burden of proof has been held to be on workman concerned to prove that he had worked for 240 days in a given year.

15. Thus, applying above principles propounded by Hon'ble the Apex Court to the facts of the present case, the workman, Shri Mintu Mukherjee has to prove that he had worked for 240 days in the year preceding his termination. Admittedly he was terminated on 28th February, 2000. Now the relevant date for counting 240 days is the date of termination of his service i.e., 28th February, 2000. Commencing from the date and counting backword working of 240 days within a period of 12 months is required to be established. The learned counsel for the workman has relied on documents Exhibits W-01 and W-02 which are order granting temporary status to the workman concerned and pay slip for the month of July, 1999 respectively. Apart from these two documents the workman concerned has no other documentary evidence to prove that he had worked for 240 days. Temporary status was given to him with effect from 09.06.1999 and thereafter, pay slip for the month of July, 1999, Ext. W-02 proves that till July, 1999 he worked in Calcutta Telephones. There is nothing on record to show that after July, 1999 the workman concerned worked uninterruptedly. Admittedly he was arrested on 7th January, 2000. Thus from July, 1999 to December, 1999 his working uninterruptedly has to be proved by the workman concerned, but he adduced no evidence in discharge of his burden. He has only filed his affidavit which is a self-serving statement. He even did not move the Tribunal to summon his attendance register etc. from the employer concerned. There is no evidence also to show that attendance register was maintained in the establishment. Adverse inference can only be drawn against the management only when it is established that the management has suppressed any document having bearing on the point. These two documents, Exhibit W-01 and Exhibit W-02 and the affidavit filed by the workman do not go to establish that the workman concerned worked for 240 days in a given year.

16. In these circumstances, it cannot be said that the workman concerned worked continuously for one year as required by Section 25F of the Industrial Disputes Act, 1947. Consequently the management was not obliged to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 while terminating the service of the workman concerned.

17. In view of above, the answer to the question under reference is in affirmative and termination of services of the workman, Shri Mintu Mukherjee is found to be legal and justified. He is not entitled to any relief.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 20th September, 2018

नई दिल्ली, 30 अक्तूबर, 2018

का.आ. 1613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दामोदर घाटी निगम के प्रबंधतंत्र के संबद्ध नियोजक और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 17/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.10.2018 को प्राप्त हुआ था।

[सं. एल–42011/158/2013–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th October, 2018

S.O. 1613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 17/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Damodar Valley Corporation and their workman, which was received by the Central Government on 22.10.2018.

[No. L-42011/158/2013– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2014

Parties : Employers in relation to the management of Damodar Valley Corporation (DVC)

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Ranjay De, Ld. Counsel.

On behalf of the Workmen : Mr. Tapas Kr. Kundu, General Secretary of the union

Dated: 11th October, 2018. Industry: Hotel Management.

AWARD

By Order No.L-42011/158/2013-IR(DU) dated 25.02.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of the management of Damodar Valley Corporation, Kolkata in terminating services of Shri C.R. Chakraborty, Ex-part-time Water Carrier-cum-Record Cleaner, Barrage & Irrigation, Navigation Division, DVC, Kolkata w.e.f. 1.4.1995 without notice or notice pay and retrenchment compensation as per the provisions of Section 25F of the ID Act, 1947 is justified? If not, what relief Shri C.R. Chakraborty is entitled to?"*

2. After reference of this dispute to this Tribunal, both the parties exchanged their pleadings. Union representing the workman concerned filed its statement of claim pleading *inter alia* that the workman was terminated on 31st March, 1995 illegally. Therefore, he submitted a representation to the Superintending Engineer, Civil for making payment of wages from 1st April, 1995 to the date of lawful termination or his service. It is also pleaded that the condition precedent for retrenchment, such as notice and compensation were not complied with, therefore, his retrenchment is illegal.

3. The management filed its written statement challenging maintainability of this reference on the ground that provisions of Section 25F of the Industrial Disputes Act, 1947 are not applicable as the workman concerned has not worked for 240 days in a given year. It is also pleaded that the workman was a temporary/part-time employee. He was never engaged against any sanctioned post. His engagement was also purely dependant on as and when required by the management, therefore, compliance of Section 25F of the Industrial Disputes Act, 1947 was not required.

4. Union has also filed its rejoinder reiterating that the workman has worked for 240 days and his retrenchment is illegal for want of compliance of provisions of Section 25F of the Industrial Disputes Act, 1947.

5. Before dwelling upon the legality or illegality of termination of the workman concerned, it would just and proper to reproduced Section 25F of the Industrial Disputes Act, 1947

> *"**25F. Condition precedent to retrenchment of workmen** – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –*
>
> *(a) the workman has been given one month's notice in writing indicating the resons for retrenchjment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months: and notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

6. "Continuous service" has been defined under Section 25B of the Industrial Disputes Act, 1947 according to which where a workman is not in continuous service within the meaning of clause (1) of Section 25B for the period of one year or six months he shall be deemed to be in continuous service under an employer when he has actually worked for not less than two hundred and forty days. The case of the management is that the workman concerned had not worked for 240 days during the preceding 12 months, therefore, he cannot claim any protection of Section 25F of the Industrial Disputes Act. However, on behalf of the workman under reference it has been argued that he had completed working for more than 240 days in a year. Therefore, his retrenchment is illegal as condition precedent as contained in Section 25F of the Act were not complied with.

7. Learned counsel for the management has contended that the burden of proof lies on the workman concerned to prove that he worked for uninterrupted period of one year or 240 days in the preceding one year of his termination in case of interrupted period of service.

8. On the question of burden of proof as to the completion of 240 days of continuous work in the preceding year, Hon'ble the Apex Court in **Range Forest Officer** v. **S.T. Hadimani**, 2002 (93) FLR 179 has held that –

> *"In our opinion the Tribunal was not right in placing onus on the management without first determining on the basis of cogent reason evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had, in fact, worked for 240 days in the year preceding his termination. Filing an affidavit is only his own statement in his favour and that cannot be recorded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."*

9. Thus, it is for the workman concerned to prove that he has worked for 240 days preceding the date of his termination. In the instant case though the union has pleaded that the workman concerned worked for 240 days before the date of his termination, but no evidence has been adduced by the workman to substantiate his claim. At the time of evidence, authorized representative of the union moved an application stating therein that the workman concerned has expired in the month of May, 2018. As he is also reported to be unmarried, his legal heirs could not be brought on record to pursue the case. Authorized representative of the union expressed his unwillingness to adduce evidence. Therefore, in absence of evidence to prove that the workman concerned worked for 240 days before the date of his termination, it cannot be said that compliance of Section 25F of the Act was required.

10. In these circumstances, the question referred to this Tribunal is answered in affirmative.

Award is made accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 11th October, 2018.

नई दिल्ली, 30 अक्तूबर, 2018

का.आ. 1614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कार्यकारी अभियंता, केन्द्रीय लोक निर्माण विभाग, शिमला और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, चंडीगढ़ के पंचाट (संदर्भ संख्या 184/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2018 को प्राप्त हुआ था।

[सं. एल–42011/71/2016–आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th October, 2018

S.O. 1614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID.No. 184/2016) of the Central Government Industrial Tribunal-cum-Labour Court-1, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to Exective Engineer, Central Public Works Department, Shimla and others and their workman, which was received by the Central Government on 03.10.2018.

[No. L-42011/71/2016– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SH. AVTAR CHAND DOGRA, PRESIDING OFFICER-CUM-LINK OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, GOVERNMENT PRESS EXTENSION BUILDING, SECTOR 18-A, CHANDIGARH-160018

ID No. 184/2016

Sh. Kishore Thakur, Branch Joint Secretary, All India Central PWD,
Karamchari Sangathan, Railway Board Building Shimla
(Himachal Pradesh)-171003. …Workmen/Union

Versus

1. The Executive Engineer, CPWD, Shimla Central Divn-2, Kannedy Cottage, Shimla (Himachal Pradesh)-171003.
2. The Executive Engineer, CPWD, Shimla Central Divn-1, Caura Maidan, Kannedy Cottage, Shimla (Himachal Pradesh)-171003.
3. The Executive Engineer, CPWD, CGO Complex,
Longwood, Shimla(Himachal Pradesh)-171001. …Respondents

AWARD

1. In the present case, a reference was received from the appropriate Government vide Letter No. L-42011/71/2016-IR(DU) dated 15.11.2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), for adjudication of a dispute, terms of which are as under:

> **"Whether the action of the management of CPWD, Shimla in not accepting the demands of union All India Central PWD (MRM) Karamchari Sangathan raised by demand notice dated 03.07.2015 (copy of the same enclosed as Annexure-C) is legal and justified? If not, then what relief the union is entitled to and from which date?"**

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute.

3. On the receipt of the above reference, notice was sent to the workmen/union as well as to the managements and workmen/union upon appearance did not file any statement of claim despite several opportunities given to the workmen/union. Later on, it was brought to the notice of this Tribunal by both the parties that a similar matter/reference for adjudication is pending before CGIT Delhi. It was stated by the representative of the workmen-union that workmen-union in fact is not interested in pursuing the present reference. The statement of Sh. Kishore Thakur, workman was also separately recorded to this effect.

4. Since the workmen-union is not interested in adjudication of this case on merits and statement has been given by the workman that he does not want to pursue the present case, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/no Claim Award'.

5. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer-cum-Link Officer

Place: Chandigarh
Dated: 04.09.2018

नई दिल्ली, 31 अक्तूबर, 2018

का.आ. 1615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य कार्यकारी अधिकारी, छावनी बोर्ड, अंबाला कैंट एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, चंडीगढ़ के पंचाट (संदर्भ संख्या 27/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2018 को प्राप्त हुआ था।

[सं. जेड–22019/03/2013–आईआर (सी–II)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 31st October, 2018

S.O. 1615.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 27/2015) of the Central Government Industrial Tribunal-cum-Labour Court-2, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Executive Officer, Cantonment Board, Ambala Cantt and their workman, which was received by the Central Government on 03.10.2018.

[No. Z-22019/03/2013– IR(C-II)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT No.2 : CHANDIGARH

ID No. 27/2015

Shri Amit Kumar S/o. Late Shri Ramesh,
H.No. 3916, Mochi Mandi,
Harmilap Prem Mandir,
Ambala Cantt. …Nominee of the Workman/Claimant

Versus

Cantonment Board,
Ambala Cantt,
Through its Chief Executive Officer …Management/Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government under clause (d) of sub-section 1 & 2-A of Section 10 of the Industrial Disputes Act (hereinafter referred to as "the Act") for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of Cantonment Board, Ambala Cantt, in respect of non qualifying service/break in service of treating the period (absence) as dies non without intimating through separate office orders to the workman is justified? If not, what relief the workman and relief sought by the workman, is entitled to and from which date ?

2. Both parties were put to notice and the claimant Amit Kumar filed his statement of claim with the averments that his father Ramesh was serving as Safai Karamchari under the Management since 1/3/1985 and during service he expired on 12/7/2011. After the death of the workman, the Management paid death Gratuity under CCS (Pension) Rules for 20 years 11 months and 9 days, out of total service of 26 years, 4 months and 11 days rendered by the deceased employee. The management failed to intimate the office orders with regard to break in service or treating the period (absence) as dies non and also filed to pay balance amount towards gratuity to the claimant despite his demand. Hence prayer has been made for direction to the Management to pay balance amount of gratuity for the period 5 years 5 months & 2 days, not counted by the Management as qualifying service.

3. The claim was contested by the Management who filed written statement & took preliminary objections inter alia that the nominee of the workman is not entitled to death gratuity for the non qualifying service period of five years five months and two days as per rule 27 of CCS Pension Rules, 1972. It is alleged that gratuity amount of Rs.2,65,427/- has already been paid to the nominee of the workman qua the qualifying service period of the workman which was only 20 years 11 months and 9 days, because the deceased workman remained absent from duty for 1255 days i.e. five years five months and two days.

4. Perusal of the record shows that although no specific issues have been framed in this case by my learned Predecessor, however parties were directed to lead their respective evidence. The workman/claimant examined himself as WW1 and tendered his affidavit Ex.A-1 whereby he reiterated his own case as set up in the claim petition. In cross examination, he stated that his father remained absent from duty as he was sick and that his father was not paid salary for the absence period.

5. On the contrary, Management examined one Shri Harkesh Kumar, Assistant Accountant who tendered his evidence by way of affidavit R-1, which is also in consonance with the averments made in the written statement. In cross examination this witness stated that no disciplinary action was taken for absence against the deceased employee. Service verification of the employee is done every month. He admitted that no opportunity was given to the employee before making an entry in his service record exception information given (to the claimant). The calculation sheet of qualifying service of the deceased employee Ramesh has been filed on record and same is now marked as Ex.C-1.

6. In view of the pleadings of the parties and evidence adduced on record, it is evident that the workman (deceased employee) worked with the Management w.e.f 1/3/1985 till his death on 12/7/2011. The workman remained absent from duty due to his illness for 1255 days i.e. five years five months and two days and this period was treated as non qualifying service/Extra Ordinary Leave and hence gratuity for the said period has not been paid by the Management. His absence from duty was not willful rather due to his illness.

7. In view of the controversy between the parties, short question arises for consideration is as to what is the effect of interruption in service/absence from duty by the workman. Rule 27 of CCS (Pension) Rules is relevant for the same and it is reproduced hereunder for the sake of convenience :—

> 27. Effect of interruption in service –
>
> (1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases :—
>
> a) authorised leave of absence;
>
> b) unauthorized absence in continuation of authorised leave of absence so long as the post of absentee is not filled substantatively;
>
> © suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government Servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;
>
> (d) transfer of non-qualifying service in an establishment under the control of the Govt. if such transfer has been ordered by a Competent Authority in the public interest'
>
> (e) joining time while on transfer from one post to another;
>
> (2) Notwithstanding contained in sub-rule (1), the Appointing Authority may, by order, commute retrospectively, the period of absence without leave as extraordinary leave.

8. In view of the Rule 27 of the CCS (Pension) Rules, it is crystal clear that forfeiture of past service of a Government Servant is not permissible qua authorised leave of absence or qua unauthorized absence in continuation of authorised leave of absence till the post so held by the absentee official is not filled, or qua his suspension, which is immediately followed by reinstatement. Even if it is admitted for the sake of arguments that the deceased employee was absent/on unauthorized leave for 1255 days due to his illness, the Management has not filed on record any document to show that during the absence period of the workman, his post was duly filled substantively, or that any other was passed by the Appointing Authority under sub-rule (2) of Rule 27 whereby the period of absence from duty by the official was treated as Extraordinary leave and that such an order was duly communicated to the official. On the contrary, it has come on record in the evidence of MW1 Harkesh Kumar, Assistant Accountant that no disciplinary action was taken for absence against the deceased employee, and further that no opportunity was given to the employee before making an entry in his service record. As such, this Tribunal is of the considered opinion that action of the Management in treating the absence of the official for a period of 1255 days (due to his illness) to be non-qualifying service/ break in service, is unjustified and unwarranted, as the same is in contravention of Rule 27 of CCS (Pension) Rules, It is held accordingly.

Relief :

As a result of the above discussion, this Tribunal has no hesitation to hold that the nominee/heirs of the deceased employee are entitled to get amount towards gratuity of the deceased workman for a period of his entire service of 26 years, 4 months and 11 days instead for a period of 20 years 11 months and 9 days and the Management is thus directed to pay balance amount towards gratuity to the legal heirs/nominee of the deceased employee within two months from the date of publication of the Award. The award is passed accordingly.

Date : 24.09.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2018

का.आ. 1616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य कार्यकारी अधिकारी, छावनी बोर्ड, अंबाला कैंट एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, चंडीगढ़ के पंचाट (संदर्भ संख्या 30/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2018 को प्राप्त हुआ था।

[सं. जेड–22019/03/2013–आईआर (सी–II)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 31st October, 2018

S.O. 1616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 30/2015) of the Central Government Industrial Tribunal-cum-Labour Court-2, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to Chief Executive Officer, Cantonment Board, Ambala Cantt and their workman, which was received by the Central Government on 03.10.2018.

[No. Z-22019/03/2013– IR(C-II)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFIER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2 : CHANDIGARH

ID No. 30/2015

Smt. Bhagwati Devi widow of late Shri Anirudh Pandey,
Ex-driver, Cantonment Board
R/o. 67, Dudla Mandi,
Ambala Cantt. …Nominee of the Workman/Claimant

Versus

Cantonment Board,
Ambala Cantt,
Through its Chief Executive Officer …Management/Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government under clause (d) of sub-section 1 & 2-A of Section 10 of the Industrial Disputes Act (hereinafter referred to as "the Act") for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of Cantonment Board, Ambala Cantt, in not giving pensionery benefits to claimant of the deceased workman is legal and justified? If not, what relief the claimant is entitled to and from which date ?

2. Both parties were put to notice and the claimant Smt. Bhagwati Devi filed statement of claim, whereas Management filed written statement.

3. As per the pleadings of the parties, admitted facts of the case are that claimant's husband namely Shri Anirudh Pandey was engaged as driver by the Management vide letter dated 23/7/1993 and he worked as such on temporary basis w.e.f. 29/7/1993 till 1999 on year to year sanction basis and thereafter he was appointed on permanent basis vide order dated 27/9/1999. He superannuated from service on 31/1/2006.

4. According to the claimant, the deceased employee was an Ex-serviceman and since he had performed about 13 years of service but the Management failed to pay pensionery benefits to him under the provisions of CCS (Pension) Rules applicable to the Cantonment Board employees. Her husband had filed an application under Section 33-C(2) of the Act before the CGIT, Chandigarh and during pendency, an order dated 25/8/2009 was passed by the said Tribunal for amicable settlement of the dispute regarding pensionery benefits to the workman. Ultimately, the said application was dismissed on 28/2/13 for want of jurisdiction. It is stated that pursuant to the aforesaid order, a resolution was passed by the Management, a copy of which has been annexed with the statement of claim. It is alleged that though the Management has got completed all the relevant papers relating to the pensionery benefits etc but no payment has been made to the claimant despite requests. The claimant has prayed that pensionery benefits be ordered to be paid to her from the date of retirement of her husband.

5. The claim of the claimant is resisted by the Management on the ground that the Cantonment Board employees are governed by Cantonment Funds Service Rules, 1937 and since the workman had not completed 10 years of service on permanent basis, he was not entitled for any pensionery benefits for want of fulfilment of qualifying service. Prayer has been made for dismissal of the claim petition.

6. Perusal of the record shows that although no specific issues have been framed in this case by my learned Predecessor, however parties were directed to lead their respective evidence. The claimant examined herself and filed her affidavit Ex.A-1 whereby she reiterated her own case as set up in the claim petition. In cross examination, she stated that initially her husband was appointed on temporary basis but denied the suggestion that her husband was not entitled to any pensionery benefits according to the rules.

7. On the contrary, Management examined one Shri Harkesh Kumar, Assistant Accountant who tendered his evidence by way of affidavit R-1, which is also in consonance with the averments made in the written statement. In cross examination this witness stated that candidates were called from the Sainik Board and no objection was obtained from the workman regarding regularization of his previous service. There was two years' probation period for class-III employees. He admitted that provident fund was deducted from, the date of initial appointment till retirement except for certain breaks. He could not say whether the resolution dated 9/2/2006 regarding the workman was passed.

8. I have heard the parties through their respective A/Rs and have gone through the records carefully.

9. It is evident from the pleadings of the parties and evidence adduced on record that claimant's husband namely Shri Anirudh Pandey was engaged as driver by the Management vide letter dated 23/7/1993 and he worked as such on temporary basis w.e.f. 29/7/1993 till 1999 on year to year sanction basis and thereafter he was appointed on permanent basis vide order dated 27/9/1999. He superannuated from service on 31/1/2006. In all he had rendered 13 years' of service with the Management, that is to say 6 years on temporary basis and 7 years on permanent basis. Prior to joining the Management, husband of the claimant was an ex-serviceman and was getting pension from Sainik Board.

10. In view of the controversy between the parties, short question arises for consideration is as to what is the qualifying service, for getting the pensionery benefits by a re-employed government servant and whether temporary service rendered by such an employee in second spell is countable or not for that purpose. I may mention that although the Management has taken a plea that the Cantonment Board employees are governed by Cantonment Funds Service Rules, 1937, however, neither extracts of any such Rules have been reproduced in its written statement nor copy thereof has been filed on record. In another case of Amit Kumar (bearing ID No. 27/2015), the Management viz. Cantonment Board Ambala itself in the written statement took reliance of Rule 27 of CCS (Pension) Rules, 1972. Therefore, the plea of the Management that the deceased employee was governed by Cantonment Funds Service Rules, 1937 is not sustainable and the controversy between the parties is required to be adjudicated in the light of CCS (Pension) Rules, 1972.

11. Rule 18 of CCS (Pension) Rules which recites about the counting of pre-retirement civil service in the case of re-employed government servants is quite relevant. Para 3 & 4 of the said Rule clearly provides that the re-employed Government Servants, who in respect of the second spell of their service have rendered 10 years' temporary service before attaining the age of superannuation or who expect to complete 10 years' service at the time of attaining the age of superannuation, shall be eligible to exercise option available to a re-employed pensioner to draw pension and such an exercise may be exercised at the time of completing the application for pension i.e. about eight months prior to attaining the age of superannuation and if no option is exercised within the said period, the Govt. servant shall be deemed to have opted for drawing the pension in which case his former service shall not count as qualifying service. In para 5 of the said Rules, it has been clearly stipulated that the provisions of paragraphs 2,3 and 4 thereof also apply to a military pensioner who is re-employed in a civil service on civil post.

12. In the light of aforesaid provisions/rules of CCS (Pension) Rules, 1972, it is crystal clear that the re-employed Government Servant like the husband of the claimant, who in respect of the second spell of his 13 years of service (6 years on temporary basis + 7 years on permanent basis) prior to attaining the age of superannuation, was very much entitled to draw government pension. As such, the contention of the Management that the workman was not entitled to draw pension for want of 10 years' of service on permanent basis, is misconceived and untenable.

13. Before concluding, it would be worthwhile to mention here that the claimant has filed on record copy of the Resolution of the Management Board pertaining to reference CRB No.119 dated 9/2/2006, considering the orders of this Tribunal dated 25/8/2009 for the pensionery benefit to Shri Anirudh Pandey, Ex-driver of the Cantonment Board and the said resolution is now marked as Ex.C-1. Same reads as under :—

> "Considered in detail and resolved that as per the legal position the matter be referred to the Dte DE, WC for sanctioning the posts in the Cantonment Board for taking into consideration the period of 7 years which Shri Anirudh Pandey had put in uninterrupted 07 years of service on temporary basis and 06 years & 04 months of regular service for according computation of retirement benefits to the applicant…."

Despite the aforesaid resolution, the claimant has not been provided with pensionery benefits for the reasons best known to the Management. Be that as it may, as discussed above, husband of the claimant was very much entitled to draw pension under Rule 18 of CCS (Pension) Rules for the 13 years uninterrupted services rendered by him to the Management. As such, this Tribunal has no hesitation to hold that action of the Management in not giving pensionery benefits to claimant of the deceased workman is illegal and unjustified.

Relief :

As a result of the above discussion, it is held that the husband of the claimant was entitled to draw pension for the second spell of his service as per rule 18 of the CCS (Pension) Rules, w.e.f. 1st February, 2006 till the date of his death and thereafter the claimant will be entitled to draw family pension, as pert rules. The Award is passed accordingly.

Date : 24.09.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2018

का.आ. 1617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य कार्यकारी अधिकारी, छावनी बोर्ड, अंबाला कैंट एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, चंडीगढ़ के पंचाट (संदर्भ संख्या 31/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2018 को प्राप्त हुआ था।

[सं. जेड–22019/03/2013–आईआर (सी–II)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 31st October, 2018

S.O. 1617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 31/2015) of the Central Government Industrial Tribunal-cum-Labour Court-2, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to Chief Executive Officer, Cantonment Board, Ambala Cantt and their workman, which was received by the Central Government on 03.10.2018.

[No. Z-22019/03/2013– IR(C-II)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT No. 2 : CHANDIGARH.

ID No. 31/2015

Shri Anil Kumar S/o. Late Shri Gian Chand,
R/o. H. No.122, RHA Bazar,
Ambala Cantt. Claimant/ Petitioner

Versus

Cantonment Board,
Ambala Cantt,
Through its Chief Executive Officer …Management/Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government under clause (d) of sub-section 1 & 2-A of Section 10 of the Industrial Disputes Act (hereinafter referred to as "the Act") for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of Cantonment Board, Ambala Cantt, in not giving the workman overtime for the Sunday and Holidays working are legal and justified ? If not what relief the workman is entitled to and from which date ?

2. Both parties were put to notice and the claimant Anil Kumar filed his statement of claim with the averments that he was appointed as Peon in the office of the Management and vide order dated 12/8/2011 he was directed to perform duties of Chowkidar in Cantonment Board Primary School and Roots School at Topkhana Bazar, Ambala Cantt where he performed his duties even on Saturday, Sunday and school holidays, without availing weekly rest. He is legally entitled to get overtime for the duty performed by him on Holidays/Sundays during the period from 12/8/2011 to 30/6/2012. He made representations dated 2/1/2012, 14/3/2012 and 30/5/2012 to the Chief Executive Officer of the Cantonment Board for payment of overtime etc. and to offer opportunity of hearing but to no response. Again his services were transferred vide order dated 5/6/2012 and fresh reminder letter dated 28/8/2012 was sent to the Chief Executive Officer regarding payment of overtime amounting to Rs.93,254/- but no reply was received. Hence, prayer has been made that his overtime claim be got paid to him.

3. The claim was contested by the Management who filed written statement & took preliminary objections inter alia that the claimant never performed overtime duty nor there was any such direction and hence the claim petition is not maintainable. While admitting that the claimant was appointed as Peon in the office of Cantonment Board, Ambala Cantt, it has been denied that the he was performing his duties on Saturday or Sundary or School Holidays, without availing the weekly rest. It has been alleged that the claimant was availing the holidays of Sunday and other school holidays and was also availing the weekly rest as given to other employees of the Management. Prayer has been made for dismissal of the claim petition with costs.

4. Perusal of the record shows that although no specific issues have been framed in this case by my learned Predecessor, however parties were directed to lead their respective evidence. The workman/claimant examined himself and tendered his affidavit Ex.A-1 whereby he reiterated his own case as set up in the claim petition. In cross examination, he stated that his salary was Rs 25000/- per month. He categorically denied the suggestion that he did not perform any duty on Saturday and Sunday or School Holidays. He also denied the suggestion that there are no rules of payment of over time in the department.

5. On the contrary, Management examined one Shri Harkesh Kumar, Assistant Accountant who tendered his evidence by way of affidavit R-1, which is also in consonance with the averments made in the written statement. This witness relied on documents Ex.MW1/1 and MW1/2. In cross examination this witness admitted that duty of Chowkidar starts from school hours and that attendance register is maintained by the School. He could not say whether the workman had given any representation to the Cantonment Board. He showed his ignorance as to who performed duty on Holidays in School.

6. I have heard A/Rs for both the parties and have perused the records carefully.

7. From the pleadings of the parties and evidence adduced on record, it is evident that the workman/claimant was appointed as Peon in the office of the Cantonment Board and he started working there w.e.f. 19/11/1988. Vide office order dated 15/4/2011 (Ex.MW 1/1) the official/claimant was directed to perform duty as Chowkidar in the Defence Estate Office, Ambala Circle till further orders. Further, vide order dated 12/8/2011 (E.MW1/2) the claimant/workman was deputed as Chowkidar in C.B.Primary School, Topkhana Bazar and Roots Public School till further orders. These orders do not at all reflect that the claimant who was directed to perform duty as Chowkidar, was required to perform his duties on shift basis or with any weekly off or that in lieu of duty performed by him on Sunday and/or Govt. Holidays, he was entitled to avail any compensatory leave. The witness of the Management could not say as to who performed duty on Holidays in School. In the face of office orders Ex.MW1/1 and Ex.MW1/2, the contention of the Management that the workman never performed overtime dury, nor there was any such direction is not sustainable. In the given circumstances, the version of the claimant that he performed his duties even on Saturday, Sunday and school holidays, without availing weekly rest, during the period from 12/8/2011 to 30/6/2012 is believable.

8. The claimant has filed on record a copy of the representation addressed to the Chief Executive Officer of Cantonment Board, Ambala (which is duly receipted in the office of the Cantonment Board on 30/5/2012 as bears the office stamp) whereby he requested for payment of overtime amounting to Rs.82,114/- in lieu of duties performed by him on Saturday, Sunday and Govt. Holidays, without any weekly rest, during the period from 12/8/2011 to 30/4/2012. The said representation is now marked as Ex.C-1. The claimant has also filed on record a copy of the letter, which he had filed before the Conciliation Officer, alongwith calculation sheet showing the specific dates of his weekly rest, Sunday and Govt.Holidays on which he had actually performed duties and calculated overtime allowances amounting to Rs.86,044/-, for 87 Nos. of days at double the rates of his per day wages, as during that period his total wages were to the tune of Rs.15025/- per month. The calculation sheet so filed by the claimant is exhaustive and is now marked as Ex.C-2. Same also appears to be proper and justified., inasmuch as the Management has not led any evidence to show that the claimant had not at all performed overtime duties on Sunday and Govt Holidays without availing compensatory leave or that the amount of overtime so calculated in the calculation sheet Ex.C-2 is incorrect.

9. Once the claimant performed overtime duty on Sunday and Govt. Holidays and even without availing weekly off during the aforesaid period from 12/8/2011 to 30/6/2011, the Management was under moral and legal obligation to grant him overtime allowance for the same. As such, action of the Management in not giving the workman overtime for the duty performed by him on Sunday and Govt. Holidays is illegal and unjustified. It is held accordingly.

Relief :

As a result of the above discussion, this Tribunal has no hesitation to hold that the workman/claimant is entitled to get payment of overtime allowance amounting to Rs.86,044/- and the Management is hereby directed to pay the same within two months from the date of publication of the Award. The award is passed accordingly.

Date : 25.09.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 नवम्बर, 2018

का.आ. 1618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उत्तर रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 147/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.11.2018 को प्राप्त हुआ था।

[सं. एल—12025/01/2018—आईआर (बी—1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 1 November, 2018

S.O. 1618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workman, which was received by the Central Government on 01.11.2018.

[No. L-12025/01/2018– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 147/2015

Shri Vivek Kumar S/o. Shri Chander Pal Singh,
Bedroll Attendants Contractors Workers' Union (Regd.)
C/o. Bhartiya Mazdoor Sangh,
5239, Ajmeri Gate,
Delhi 110006. … Workman/Claimant

Versus

1. The Senior Mechanical Engineer (C&W),
   DRM Office, Northern Railways,
   State Entry Road, New Delhi.

2. M/s. Shomuk Engineering & Consultancy Services,
   G-1, GF South Extn., Part-II,
   New Delhi 110049. …Management

AWARD

This Award shall decide a claim petition directly filed by Shri Vivek Kumar s/o. Shri Chander Pal Singh under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act). As per averments made in the claim petition, the workman/claimant was engaged by M/s Shomuk Engineering & Consultancy and had been working as Bedroll Attendant at Sarai Rohilla Railway Station of Management No.1 since 10/12/2012. He was being paid wages at Rs.6500/- per month, though he was made to work for 10 to 12 hours a day. The workman was not paid any over time wages and other facilities as provided under the Act despite his oral demands. The workman requested for leave from the Contractor as there was marriage function in his family in December, 2014 but the contractor asked to come and receive his dues after one week. After one week, when the workman went to attend his duty, the Contractor did not allow him and illegally terminated him from service. It is alleged that the Management has not paid his earned wages for the months of July, August and November 2014. It is also alleged that services of the workman have been illegally terminated by the Management without any charge-sheet or notice and as such, there is violation of provisions of Section 25-F, 25-G and 25-H of the Act. Demand letter dated 5/2/2015 was sent to the Management but to no response. The workman is unemployed and has not source of livelihood since after his termination from service. Prayer has been made for reinstatement into service with full back wages and consequential relief..

3. The claim petition has been resisted by the Management No.1 who filed its written statement and took preliminary objections inter alia that the workman is not its employee rather may be a casual labour employed by the contractor M/s Shomuk Engg. & Consultancy Services who has taken the contract for providing services of the bed roll on the trains on behalf of the Railways. While denying the allegations as made in the claim petition, it has been stated that no complaint regarding non payment of dues by the workman was ever received by the Managemetn No. 1. Prayer has been made for dismissal of the claim petition.

4. Management No.2 in its written statement has resisted the claim of the workman on the ground that he was sacked due to his carelessness & unprofessional attitude towards his contractual obligations, inasmuch as the workman remained absent from duty from 8th to 28th July, 2014 without any leave or intimation and he was strongly warned about the same by the Management but he again on 28/11/2014 left the station without any information & did not come for a week and as such he was sacked and in support copy of attendance register has been annexed. However, relationship of the employee-employer between the workman and Management has not been denied. It has also been denied that workman was not given opportunity of showing cause as to why his services were terminated.

5. The claimant/workman filed rejoinder wherein he denied all the allegations made by the Management/s and reiterated his own case as set up in the claim petition.

5) On the pleadings of the parties, following issues were framed on 9.8.2016 :—

i) Whether termination of the workman vide order dated 10.12.2014 by the management is wrong and illegal ?

ii) Whether claim is not legally maintainable in view of the various preliminary objections ?

iii) Relief

6) The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/3.

7) On the other hand, in order to rebut the case of the claimant the Management No.1 examined Shri N.K. Pandey, DME/C&W working in Northern Railways, as MW1 who tendered his evidence by way of affidavit Ex.M1W1/A, whereas Management No.2 examined one Shri Naveen Kumar Kulashri, Manager who also tendered his evidence by way of affidavit Ex.M2W1/A and relied on the documents Ex.M2W1/1 & Ex.M2W1/2.

8) I have carefully gone through the evidence adduced on record by the parties and have given my thoughtful consideration to rival contentions of the parties counsel.

Issue No. 1 to 3 :

9) All these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of.

10) It is clear from the pleading of the parties on record that the claimant/workman was working at Sarai Rohilla Railway Station as bed-roll attendant and was engaged by the contractor M/s Shomuk Engineering and Consultancy Services in the year 2014. Though the workman has pleaded in the claim petition that he has been working as Bedroll Attendant at Sarai Rohilla Railway Station **w.e.f. 10.12.2012,** he has not filed any document to substantiate this part of his claim excepting his bald statement. Entry pass Ex.WW1/3 filed by the workman himself is **dated 27.5.2014** wherein address of M/s Shomuk Engg. & its phone numbers have been mentioned. The workman WW1 admitted in his cross examination that he is an employee of Management No.2 who came into picture in 2014; entry permits were issued by Management No.2; his wages were being paid by Management N.2 and that his record of leave and salary./wages etc. were being maintained by Management No.2. This clearly establishes that the workman was duly engaged by the Management No.2 in the year 2014 and that is why wages were being to the workman by Management No.2. It is not the case of the Management No.2 that the workman was a casual or daily wager or that he had not completed service of 240 days in a calendar year,

11) I may mention that the workman/claimant has not led any cogent evidence to show that he was employed by Management No.1 Northern Railways or that the contract executed by Management NO.1 in favour of Management No.2 was sham or forged one. A suggestion was given to Shri Navee Kumar Kulashri, M2W1 (witness of the Management No.2) that copy of the agreement Ex.MW2W1/4 filed on record was a forged & fabricated document, which suggestion was denied by the witness. The said agreement was executed between Management No.1 and Management NO.2 for a period of two years w.e.f. 28.6.2014 to 27.6.2016 for linen distribution in coaches of trains originating from Delhi Sarai Rohilla Station.

12) It has been pleaded by the workman in para 5 of his claim petition that that he was not paid earned wages for the months of July, August and November, 2014 by the Management and this fact has also been stated by the workman in his affidavit Ex.WW1/A. However, he admitted in his cross examination that signatures do appear on the documents Ex.WW1/M-1 and WW1/M-2 at point-A. Same are extracts of Wage Payment Register for the months of July to November, 2014 and do show that signatures of workman appear on the revenue stamp towards receipt of wages for the months of July to September, 2014 during which period he was being paid wages @ Rs.8554/- per month, depending upon the number of days he performed duty. However, extract of wage register produced by Management No.2 for the month of November, 2014 shows that a sum of Rs.5082/- was payable to the workman, on the basis wages calculated @ Rs. 8632/- per month as he worked only for 19 days in that month and there does not appear any revenue stamp or signatures of the workman. All this suggests that the wages for the month of November, 2014 only was not received by the workman from Management No.2 and same is due.

13) Shri Vivek Kumar, claimant (WW1) has **admitted in his cross examination that *vide* letter dated 3.2.2016 issued by Management No.2, he was called in the office for full & final settlement but he did not go to the office.** He denied the suggestion that he was offered job at some other site by Management No.2.

14) In the light of documents Ex. Ex.WW1/M-1 and WW1/M-2 & admission of the claimant that **vide letter dated 3/2/2016 Management had called him in the office for full & final settlement but he did not go to the office,** the plea of the workman that he was not paid earned wages by the Management for the months from July to November, 2014 is untenable. **However, the fact remains that earned wages for November, 2014 amounting to Rs.5082 is yet to be paid to the workman by the Management No.2.**

15) Demand letter dated 5/2/2015 (ExWW1/1) was sent by the workman to the Management No.1 and 2 wherein it was stated that he had requested the contractor to grant him leave for one week as there was marriage in his family but the contractor declined and asked him to come after one week for taking full & final payment and ultimately when he went to join duty on 8/12/2014 he was illegally terminated by the contractor. To the same effect is the version by the claimant in his affidavit Ex.WW1/A. The claimant has proved on record postal receipts Ex.WW1/2 and Ex.WW1/3 whereby demand letter was sent to both the Management.

16) As per the pleadings in the written statement and affidavit ExM2W1 of Naveen Kumar Khalasri (witness of the Management No.2), the claimant/workman was sacked due to his carelessness & unprofessional attitude towards his contractual obligations, inasmuch as the workman remained absent from duty from **8th to 28th July, 2014** without any leave or intimation and he was strongly warned about the same by the Management but he again on **28/11/2014 left the station without any information & did not come for a week** and as such he was sacked.

17) Though it was stated by the claimant in his pleadings as well as in the affidavit Ex.WW1/A that he had requested the contractor to grant him leave for one week as there was marriage in his family but the contractor declined and asked him to come after one week for taking full & final payment and ultimately when he went to join duty on 8/12/2014 he was illegally terminated by the contractor, however in his cross examination, he admitted that he remained on leave from 9/7/2014 to 28.07.2014 and was also on leave from 27-11-2014 to 8-12-2014. But the fact remains that the workman/claimant has been sacked by Management No.2 on 8/12/2014. Shri Naveen Kumar - Witness of Management No.2 while denying the suggestion that the workman was illegally terminated on 8/12/2014, stated that the claimant himself abstain from work and a notice was issued to the workman for his unauthorized absence, but copy of such notice has not been filed on record. He also admitted that no domestic enquiry was conducted regarding unauthorized absence of the workman from duty. He also admitted that demand notice Ex.WW1/1 was received from the workman but clarified that the Management had issued notice to the workman to accept his arrears.

18) From the evidence adduced on record on behalf of the Management No.2, it is evident that no charge sheet was served upon the claimant nor any enquiry was conducted against him prior to his sacking/termination on 8/12/2014. Further, Management No.2 has not adduced any evidence to show that retrenchment benefits *viz.* one month's notice or compensation in lieu of notice period, have been paid to the claimant at the time of his termination from services. As such, there is violation of the provisions of Section 25-F of the Act.

19) There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management Bank to be illegal and void under the law.

20) Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice any compensation was paid to him, as such action of the Management in terminating the services of the workman is held to be illegal and void.

21) Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. The workman/claimant has testified that after illegal termination, he is unemployed and has no source of livelihood, though he made efforts to find out a job. The Management has not adduced any evidence to show that the claimant is gainfully employed or earning his livelihood after his termination.

22) The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

23) The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

24) A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

25) However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment *i.e.* whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."*

26) Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :—

> "In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

27) Having regard to the legal position as discussed above and the fact that the claimant was performing duty with Management No.2 as Bedroll Attendant which job is of regular and perennial in nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages as well as arrears of **wages for November, 2014 amounting to Rs.5082**, inasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the Management No 2. Award is passed accordingly against Management No.2.

Date : 16.10.18

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 नवम्बर, 2018

का.आ. 1619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, पूर्वी तट रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 32/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.11.2018 को प्राप्त हुआ था।

[सं. एल—12025/01/2018—आईआर (बी—1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 1st November, 2018

S.O. 1619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2016) of the Central Government Industrial Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of East Coast Railway and their workman, which was received by the Central Government on 01.11.2018.

[No. L-12025/01/2018– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 32/2016

Date of Passing Order – 1st October, 2018

Between:

1. The Sr. Divisional Electrical Engineer, (OP)
   East Coast Railway, Khurda Road,
   Dist. Khurda – 752 050.

2. M/s. Janaki Nath Sharma, Contractor Establishment,
   Of East Coast Railway, Bhubaneswar,
   Plot No. 792(P), Malaya Vihar, G.G.P. Colony,
   Rasulgarh, Bhubaneswar – 10, Khurda. …1st Party-Managements

(And)

Shri Ashok Kumar Pattanaik,
S/o. Shankar Pattanaik, at present
C/o. G. Sitapati, Gajapati Nagar,
Po./Ps. Jatni, Dist. Khurda – 752 050. …2nd Party-Applicant

Appearances:

M/s. D.Mohanty, Advocate …For the 1st Party-Management No. 1

Shri R.N. Rath, Autho. Rep. … For the 1st Party-Management No. 2
Shri A.K. Pattnaik. … For Himself the 2nd Party-Applicant

ORDER

Authorized representatives of the parties are present. A settlement between the parties in Form No. H is filed. It is submitted by the parties that the matter has been amicably settled and the case be disposed of in accordance with the settlement out reached between the parties. On being asked it is submitted by the parties that the settlement was volunteered one and the workman was not influenced in any manner. Having regard to the settlement made between the parties the application under section 2-A(2) is allowed as per the terms and conditions of the settlement and the case is disposed of accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2018

का.आ. 1620.—राष्ट्रपति, श्री मुरलीधर प्रधान पीठासीन अधिकारी, केन्द्र सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद को दिनांक 05.11.2018 से छः माह की आगे की अवधि तक अथवा नियमित पदस्थ अधिकारी नियुक्ति तक अथवा अगले आदेशों तक, जो भी पहले हो, पीठासीन अधिकारी, केन्द्र सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, बैंगलोर के पद का अतिरिक्त प्रभार सौंपते हैं।

[सं. ए–11016/03/2009–सीएलएस–II]

अजय मलिक, अवर सचिव

New Delhi, the 6th November, 2018

S.O. 1620.—The President is pleased to extend the period of additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore entrusted to Shri Murlidhar Pradhan, Presiding Officer, Central Government Industrial Tribunal-cum-Labour, Hyderabad for a further period of 06 months with effect from 05.11.2018, or till the appointment of a regular incumbent, or until further orders, whichever is the earliest.

[No. A-11016/03/2009–CLS-II]

AJAY MALIK, Under Secy.

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